

EX PARTE APPEAL BRIEF

In Re Application of: Juvent, Inc.

Application Serial No. 78/873, 139

Filed: May 1, 2006

Trademark: OSTEO PLATFORM



01-08-2008

Attorneys for Appellant

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Estate of P.D. Beckwith v. Commissioner of Patents, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920)

In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565 (TTAB 1972)

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Shoe Corp. of America v. Juvenile Shoe Corp., 266 F.2d 793, 121 U.S.P.Q. 510 (C.C.P.A. 1959)

Stix Products, Inc. v. United Merchants & Mfrs., Inc., 160 U.S.P.Q. 777, 785 (S.D.N.Y. 1968)

U.S. Search, LLC, v. US Search.com, Inc., 300 F.3d 517; 2002 U.S. App. LEXIS 16590; 63 U.S.P.Q.2d (BNA) 2013 (Fed. Cir. 2002)

Secondary Sources

J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition § 11:51 (4th Ed. 2005)

J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition § 11:67 (4th Ed. 2005)

J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition § 11:68 (4th Ed. 2005)

J. Thomas McCarthy, 3 McCarthy on Trademarks and Unfair Competition § 11:69 (4th Ed. 2005)

Trademark Manual of Examining Procedure §1209.03(d).

www.wikipedia.com

www.answers.com

I. INTRODUCTION

Appellant hereby appeals from the Examining Attorney's refusal to register the above-identified Application Serial Number 78/873,139, and respectfully requests that the Trademark Trial and Appeal Board (TTAB) reverse the Examining Attorney's decision. A Notice of Appeal was filed on October 18, 2007. Appellant seeks to register the following mark on the Principal Register: "OSTEO PLATFORM" for "medical apparatus, namely, vibration plates for therapeutic purposes", in International Class 010. The Examining Attorney issued a Final Refusal to register Appellant's mark on the grounds that the Examining Attorney finds Appellant's mark "merely descriptive" of the goods in Class 010.

II. RECITATION OF FACTS

A. Description of the Record

The record includes:

The Application filed on May 1, 2006 by Appellant Juvent, Inc. having the Serial No. 78/873,139; the Examining Attorney's first refusal to register Appellant's mark, issued on August 25, 2006, due to the Examining Attorney's determination of the mark's being merely descriptive (Office Action No. 1); Appellant's response to Office Action No. 1, filed on February 22, 2007, arguing against the refusal (Response to Office Action No. 1); the Examining Attorney's final refusal to register Appellant's mark, issued on April 23, 2007, maintaining and making the refusal final (Office Action No. 2); Appellant's reply to Office Action No. 2, specifically a Request for Reconsideration, filed on October 19, 2007 (Response to Office Action No. 2); the Examining Attorney's Denial of the Request for Reconsideration, issued October 29, 2007 (Office Action No.

3); Appellant's Notice of Appeal filed with the TTAB on October 18, 2007 (Notice of Appeal); Official Communication from the TTAB setting a January 8, 2008 due date for the filing of the Appeal Brief.

Appellant further submits copies of the following registrations for various marks that include the terms OSTEO and PLATFORM (and slight variations thereof)

(Appellants Exhibit 1):

<u>Mark</u>	<u>Int. Class</u>	<u>Goods/Services</u>
OSTEO EDGE	005	Nutritional supplements to increase bone density
OSTEO-AIDE	005	Calcium dietary supplement
OSTEO-SIZE	005	Nutritional supplements for bone and joint
OSTEO-SITE	010	Medical device, namely a bone biopsy needle
OSTEO-PIN	010	Bioresorbable pins used in dental procedures
OSTEO-TITE	010	Medical apparatus, namely bone screws
OSTEO PROTECT	005	Vitamins for strengthening bone and teeth
OSTEOGRAF	010	Bone grafting material
OSTEOTECH	010	Bone grafting material

OSTEOCURE	010	Bone growth stimulation device
OSTEO-MESH (cancelled)	010	Surgical mesh
OSTEO CARE	010	Bone growth stimulation device
OSTEOANALYZER (cancelled)	010	Scanners for detecting bone disorders
PLATFORM	005	Dietary and/or nutritional supplements
PLATFORM MULTI-NUTRITIONAL FORMULA	005	Multi-nutrient formula
PLATFORM	010	Orthopedic implant
PLATFORM (cancelled)	010	Catheters
PLATFORM SLUSH	010	Medical and surgical equipment

B. Procedural History

Appellant, Juvent, Inc., filed its application, serial number 78/873,139, for U.S. Federal Registration of the OSTEO PLATFORM trademark on the Principal Register in International Class 010 for “medical apparatus, namely, vibration plates for therapeutic purposes” on May 1, 2006 (see Application). The application was filed pursuant to Section 1(b) of the Trademark Act.

An Office Action, issued August 25, 2006, stated that the wording OSTEO PLATFORM merely describes the goods and was refused registration under Trademark Act Section 2(e)(1) (see Office Action No. 1).

On February 22, 2007, Appellant's representative filed a Response to the Office Action refuting the refusal to register the mark based on descriptiveness. Appellant argued, among other things, that the mark was not descriptive due to potential alternative meanings and the evidence of numerous federally registered trademarks presently employing the terms "OSTEO" and/or "PLATFORM" or slight variations thereof in a similar manner as Appellant (see Response to Office Action No. 1).

A Final Office Action, issued on April 23, 2007, made the refusal to register final under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1) (see Office Action No. 2).

Appellant responded to the refusal on October 19, 2007 with a Request for Reconsideration further arguing against the merely descriptive refusal based on the *No Nonsense* factors of the degree of imagination test, the competitors need test and public use test (see Response to Office Action No. 2). A Notice of Appeal was filed on October 18, 2007 to preserve the Appellants appeal rights (see Notice of Appeal).

The Examining Attorney reviewed the Request for Reconsideration, determined the arguments against the refusal were unpersuasive, and on October 29, 2007 informed the Appellant that the final refusal to register the mark was sustained (see Office Action No. 3).

On November 9, 2007 Appellant was informed by the Board that the appeal was resumed and Appellant was allowed until sixty days from the mailing date (i.e. by January 8, 2008) in which to file the instant appeal brief.

III. STATEMENT OF THE ISSUE

The sole issue before the Board, pursuant to Section 2(e)(1) of the Lanham Act, is whether the term “OSTEO PLATFORM” in Appellant’s Trademark Application Serial No. 78/873,139, when applied to Appellant’s goods, specifically, “medical apparatus, namely, vibration plates for therapeutic purposes”, in International Class 010, is merely descriptive.

IV. ARGUMENT

A. “OSTEO PLATFORM” IS NOT MERELY DESCRIPTIVE OF APPELLANT’S GOODS

The Examining Attorney has refused registration of the above-referenced mark under Section 2(e)(1) on the ground that the mark OSTEO PLATFORM is merely descriptive of Appellant’s goods, specifically, “medical apparatus, namely, vibration plates for therapeutic purposes”. Reconsideration and withdrawal of the refusal to register the mark is respectfully requested in view of the following remarks.

To determine whether a mark is descriptive or suggestive, the courts and the U.S. Trademark Office Trial and Appeal Board frequently use the “degree of imagination test.” See, e.g., No Nonsense Fashions, Inc. v. Consolidated Foods Corp., 226 U.S.P.Q. 502, 507 (TTAB 1995). “A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods.” Stix Products, Inc. v. United Merchants & Mfrs., Inc., 160 U.S.P.Q. 777, 785 (S.D.N.Y. 1968). “If the mental leap between the word and the product’s attributes is not almost instantaneous, this strongly indicates suggestiveness, not direct descriptiveness.” Inventacorp Inc. v. Arabian Investment Banking Corp., 19 U.S.P.Q.2d 1056 (11th Cir. 1991). To the extent that there are doubts on whether a mark is merely descriptive, said doubts are resolved in favor of the Appellant. In re Gourmet Bakers, Inc., 173 U.S.P.Q. 565 (TTAB 1972).

Section 2(e)(1) explicitly states that the mark must be considered in relation to the goods of the Appellant. The descriptiveness of the mark seeking registration is determined on the basis of the goods or services as set forth in the application. McCarthy on Trademarks and Unfair Competition § 11:51 (2005); In re Vehicle Information

Network, Inc., 32 U.S.P.Q.2d 1542 (TTAB 1994). Therefore, the Examining Attorney must consider the Appellant's goods as identified in the application and those goods only.

The present application seeks registration of the mark OSTEO PLATFORM for the goods, "medical apparatus, namely, vibration plates for therapeutic purposes". In Office Action No. 3, the Examining Attorney incorrectly recites the description of the goods to be "vibration plates *forming a platform* used for therapeutic purposes, *including the treatment of bone related medical conditions such as osteoporosis and/or osteoarthritis*". It is evident that the Examining Attorney has had to go beyond the description of the goods, specifically, by requesting further information from the Appellant in Office Action No. 1 and by doing research of the goods on the Appellant's website as shown in Office Action No. 3 to fully understand the nature of Applicant's goods. Hence, it is evident that the descriptiveness of the mark is not being determined on the basis of the goods or services *as set forth in the application* and requires imagination, thought and perception to reach a conclusion as to the nature of the goods. Accordingly, the mental leap between the word and the product's attributes is not almost instantaneous and strongly indicates suggestiveness, not direct descriptiveness.

In determining whether a mark is merely descriptive, it is instructive to look to *No Nonsense Fashions, Inc.*, *supra*, in which the Trademark Trial and Appeal Board adopted the following three part test: 1) the degree of imagination; 2) competitor's use; and 3) competitor's need.

**I. "OSTEO PLATFORM" REQUIRES A DEGREE OF
IMAGINATION (FIRST NO NONSENSE FACTOR)**

Under the degree of imagination test, the more imagination that is required on the consumer's part to perceive the nature of the goods, the less likely it is that the mark will

be considered descriptive. A descriptive term clearly conveys an immediate idea about the characteristic of the goods. McCarthy § 11:67. Conversely, a suggestive mark, when used with the goods in issue, requires imagination, thought and perception to reach a conclusion as to the nature of the goods.” Stix Products, Inc., *supra* at 785.

Here, the mark is OSTEO PLATFORM for use in connection with a medical apparatus, namely, vibration plates for therapeutic purposes. It is respectfully submitted that OSTEO PLATFORM in no way instantaneously describes a medical apparatus, namely vibration plates for therapeutic purposes. In reality, OSTEO PLATFORM is a composite phrase¹ which may be suggestive at best, since PLATFORM comprises many definitions as evidenced in Exhibit 2. For example, among other definitions, PLATFORM may connote a computer’s system or software or a set of principles or opinions for a particular group and not merely “a raised level surface on which people or things stand” as contended by the Examining Attorney.

Moreover, in accordance with a search performed on GOOGLE for the word PLATFORM, “PLATFORM” has different meanings depending on how the term is used. However, the first page of Google, showing 9,490,000 hits for the word, illustrates that the term “platform” refers to of or relating to computer software and programs and operating system platforms (see Response to Office Action No. 2). The word platform in no way describes a medical apparatus used for therapeutic purposes. Thus, the term “PLATFORM” is suggestive because it requires imagination, thought and perception to reach a conclusion as to the nature of the goods and the mental leap between the word and the product’s attributes is not almost instantaneous. As applied to the goods, OSTEO

¹ The determination of whether the composite mark has a descriptive significance turns upon the question of whether the combination of terms evokes a new and unique commercial impression. See TMEP §1209.03(d).

PLATFORM may suggest that the medical apparatus is a “a medical system on which programs or operating systems operate or software program” or “a set of medical principles or opinions” and not merely a “raised level surface on which people or things stand”. Accordingly, linking together “OSTEO” and “PLATFORM” creates an impressive sounding composite non-sequitur, which, by definition, cannot “describe” the goods it is accused of describing. A new and unique commercial impression has been created by the composite phrase. According to the Trademark Manual of Examining Procedure (TMEP) §1209.03(d), “a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods.”

In addition, under the anti-dissection rule, a composite mark is tested for its validity and distinctiveness by looking at it as a whole, rather than dissecting it into its component parts. As the U.S. Supreme Court stated: “the commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. Estate of P.D. Beckwith v. Commissioner of Patents, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920). Even if the Examining Attorney believes either of the terms OSTEO and PLATFORM to be descriptive of the goods, the term in combination, creates a unique, nondescriptive meaning as applied to the goods.

Indeed, to paraphrase the analysis stated in Airco, Inc. v. Air Products & Chemicals Inc., 196 U.S.P.Q. 832, 835 (TTAB 1977): “the literal meaning of the mark [OSTEO PLATFORM] may, through an exercise of mental gymnastics and extrapolation suggest or hint at the nature of Appellant’s [goods], i.e., [medical apparatus, namely,

vibration plates used for therapeutic purposes], but it does not, in any clear or precise way, serve to describe those [goods].”

Thus the “imagination test” strongly supports the conclusion that OSTEO PLATFORM is not descriptive of a medical apparatus, namely, vibration plates for therapeutic purposes, is a suggestive mark and is worthy of trademark protection.

**II. APPELLANT’S COMPETITORS DO NOT NEED THE TERM
“OSTEO PLATFORM” TO DESCRIBE THEIR GOODS (SECOND
NO NONSENSE FACTOR)**

The second prong for determining whether OSTEO PLATFORM is descriptive is the competitor’s need test. See, e.g., No Nonsense Fashions, Inc., *supra* at 508. Essentially, this test considers whether the Appellant’s competitors need the term to describe their goods. The less the need there is by competitors to use the wording the less likely the mark to be considered descriptive. McCarthy § 11:68.

Because the term is suggestive when used in connection with a medical apparatus, namely vibration plates used for therapeutic purposes, competitors clearly do not need the term OSTEO PLATFORM to describe their goods. There is a wealth of other terms with which to describe these goods. Furthermore, a Google search of the word OSTEO PLATFORM did not result in any hits (see Response to Office Action No. 2) with the two words together. Accordingly, it is not necessary for companies to use the term OSTEO PLATFORM for vibration plates for therapeutic purposes, especially in view of the incongruous meaning of the mark.

The Examining Attorney attempts to provide evidence of the alleged descriptive nature of the proposed mark, but the excerpts attached to Office Action No. 2 include what appears to be the present Appellant’s proposed goods. There is no other “public

use” citation of the combined term OSTEO PLATFORM contained in the Office Actions. In essence, the Examining Attorney has cited no usage of OSTEO PLATFORM, other than copies of the Appellant’s website, that create any nexus between OSTEO PLATFORM and a medical apparatus, namely vibration plates, for therapeutic purposes. Indeed, the Examining Attorney has failed to find any instances of use, other than the present Appellant’s, which joins the terms “OSTEO” and “PLATFORM” for a description of any product or service, thus supporting Appellant’s position on the “competitor’s need test”. Although the Examining Attorney has provided copies of search results with the term PLATFORM in Office Action No. 3, these excerpts clearly indicate platforms for exercise use and do not indicate use of the term “OSTEO PLATFORM”. It is respectfully submitted that the evidence provided are wholly inadequate to support an objection based on descriptiveness.

**III. APPELLANT’S COMPETITORS HAVE NOT USED THE TERM
“OSTEO PLATFORM” FOR SIMILAR GOODS (THIRD NO
NONSENSE FACTOR)**

The third prong of the test for determining whether OSTEO PLATFORM is merely descriptive is the extent to which the competitors have used the wording for similar goods. Frequent use by others is an indication that the mark is descriptive. McCarthy § 11:69.

Here, the Examining Attorney has not cited any prior usage (registered or otherwise) incorporating the terms OSTEO PLATFORM for goods in International Class 010. Instead, the Examining Attorney has submitted Internet evidence showing use of the terms “vibrating platforms” and “platforms” in Office Action No. 3. However, as stated above, the Examining Attorney has failed to submit any evidence showing use of

the term "OSTEO PLATFORM" in association with medical apparatus, namely, vibration plates for therapeutic purposes.

It is proper to take notice of the extent to which the terms have been used in trademarks by others on such goods. Shoe Corp. of America v. Juvenile Shoe Corp., 266 F.2d 793, 121 U.S.P.Q. 510 (C.C.P.A. 1959). If it has been frequently so used, the inference is warranted that it is not purely distinctive, that it would be likely to be understood by purchasers as describing the merchandise itself, rather than the source hence having little or no trademark significance (*Id.*). Accordingly, a search for the term PLATFORM, in combination with other terms and/or slight variations thereof, on the U.S.P.T.O. website results in many marks comprising the term PLATFORM in connection with computer software goods and not in connection with vibration plates for therapeutic use. Therefore, the term PLATFORM is descriptive as applied to merchandise relating to computer hardware and software goods. Appellant respectfully submits that the proper test of descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning. Bada Co. v. Montgomery Ward & Co., 426 F.2d 8, 165 U.S.P.Q. 483 (9th Cir. 1970). Accordingly, if the meaning of the term PLATFORM creates a commercial impression in the minds of the class of buyers that the term is descriptive of computer software platforms then the term is distinctive with respect to the Appellant's goods. In other words, the term OSTEO PLATFORM is not descriptive of vibration plates for therapeutic purposes but is suggestive of the goods and the refusal should be withdrawn.

IV. APPELLANT'S "OSTEO PLATFORM" MARK SHOULD NOT BE DENIED REGISTRATION ON THE PRINCIPAL REGISTER

It is respectfully submitted that the Appellant's mark is not merely descriptive but rather suggestive of the above-identified goods as evidenced by the numerous Federally Registered Trademarks presently employing the term "OSTEO" and/or "PLATFORM" (or slight variations thereof) in a similar manner as the Appellant.

For example, all of the following trademarks have received Federal Registration:

<u>Mark</u>	<u>Int. Class</u>	<u>Goods/Services</u>
OSTEO EDGE	005	Nutritional supplements to increase bone density
OSTEO-AIDE	005	Calcium dietary supplement
OSTEO-SIZE	005	Nutritional supplements for bone and joint
OSTEO-SITE	010	Medical device, namely a bone biopsy needle
OSTEO-PIN	010	Bioresorbable pins used in dental procedures
OSTEO-TITE	010	Medical apparatus, namely bone screws
OSTEO PROTECT	005	Vitamins for strengthening bone and teeth
OSTEOGRAF	010	Bone grafting material

OSTEOTECH	010	Bone grafting material
OSTEOCURE	010	Bone growth stimulation device
OSTEO-MESH (cancelled)	010	Surgical mesh
OSTEO CARE	010	Bone growth stimulation device
OSTEOANALYZER (cancelled)	010	Scanners for detecting bone disorders
PLATFORM	005	Dietary and/or nutritional supplements
PLATFORM MULTI-NUTRITIONAL FORMULA	005	Multi-nutrient formula
PLATFORM	010	Orthopedic implant
PLATFORM (cancelled)	010	Catheters
PLATFORM SLUSH	010	Medical and surgical equipment

All of the above registered trademarks (including those cancelled which were once registered) use the terms "OSTEO" and/or "PLATFORM" in connection with goods and services which are somewhat suggestive to the respective marks in a manner similar to the Appellant. While all of the prior registrations listed above are believed to be relevant and are believed to support Appellant's request for allowance, the Board's attention is particularly directed to the following prior registrations, in which the term OSTEO is not disclaimed and was not found to be descriptive. For example, the mark OSTEOGRAF is used for bone grafting material. A graft refers to material affixed to other tissues or organs and OSTEO is a Greek prefix for osteoporosis as indicated in

Office Action No. 1 and osteoporosis is a disease of bone in which the bone mineral density (BMD) is reduced. In another example, the mark OSTEO-PIN is used as bioresorbable pins for dental procedures, in other words, to be used on teeth/bone. Other examples of marks with the term OSTEO without a disclaimer from the list above is shown in Exhibit No. 1.

Presumably, i.e., applying the Examining Attorney's reasoning, each of these goods could be described as "of or relating to bone" in some sense or another. The fact that each of these marks is nevertheless registered on the Principal Register without any disclaimer whatsoever demonstrates the fallacy of the Examining Attorney's position. The term OSTEO was not determined to be merely descriptive of these goods, just as it is not descriptive of the Appellant's goods.

Moreover, since the PTO has already considered OSTEOGRAF registerable for bone grafting material and OSTEO-PIN registerable for bioresorbable pins for dental procedures, OSTEO PLATFORM should, likewise, be registerable for medical apparatus, namely, vibration plates used for therapeutic purposes. To deny registration to Appellant for a similar mark would simply frustrate the needs of the Appellant and fly in the face of precedent.

Furthermore, our search discovered that the Registered Trademarks listed above have been approved by the United States Patent and Trademark Office, without requiring evidence of secondary meaning. Such information has been deemed by the Courts to be powerful evidence that a mark is suggestive and not merely descriptive.

It is well established that when the PTO issues a certificate of registration, that registration provides the registrant with prima facie evidence of 1) the validity of the mark and its registration, 2) the registrant's ownership, and 3) the

registrant's "exclusive right" to use the mark on or in connection with the goods and services specified in the certificate of registration. Thus, with the certificate of registration, "the registrant obtains prima facie evidence that its mark is not generic in the eyes of the relevant public, see 15 U.S.C. § 1064(3), and that its mark is not 'merely' descriptive, but at a minimum is descriptive and has obtained secondary meaning, see 15 U.S.C. § 1052(e)." We have held that a district court should not freely substitute its opinion for that of the PTO because a decision to register a mark, without requiring evidence of secondary meaning, is powerful evidence that the registered mark is suggestive and not merely descriptive.....[t]he distinctiveness of a mark is measured in connection with the particular goods or services that are being offered" U.S. Search, LLC, v. US Search.com, Inc., 300 F.3d 517; 2002 U.S. App. LEXIS 16590; 63 U.S.P.Q.2d (BNA) 2013 (Fed. Cir. 2002)

As a result thereof, all of the above-identified marks have been deemed suggestive and not merely descriptive. It is therefore respectfully submitted that much like the marks cited above, in particular, OSTEOGRAF, and OSTEO-PIN, Appellant's mark OSTEO PLATFORM is suggestive, and not merely descriptive of Appellant's goods. This evidence further confirms that the Appellant's mark as whole is not merely descriptive and is properly entitled to be registered on the Principal Register.

It is also respectfully submitted that the definition of the term OSTEO (cited in Office Action No. 1 and shown in Exhibit 2) as "a Greek prefix from the word osteon meaning bone" is further support for Appellant's position that the term OSTEO is not merely descriptive. As the term OSTEO is derived from the Greek language, it is not likely that all consumers are well versed in the Greek language to instantaneously come to the conclusion that the term OSTEO is a Greek prefix term of or relating to bone and hence, does not necessarily immediately tell the public something about the goods.

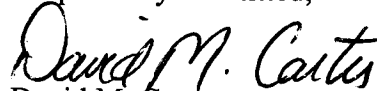
Furthermore, the two definition citations cited in Office Action No. 1 do not even link the two words together and therefore is wholly inadequate to support an objection based on descriptiveness.

CONCLUSION

For the reasons stated above, Appellant respectfully urges the Board to sustain this Appeal and grant registration of the Appellant's Application Serial No. 78/873,139.

Dated: Melville, NY
January 7, 2008

Respectfully submitted,



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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEO PLATFORM

EXHIBIT 1



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Typed Drawing

Word Mark	OSTEO-EDGE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary supplements, namely, nutritional supplements for increasing bone density, joint flexibility, treatment of calcium and other mineral loss and general bone strength. FIRST USE: 20010200. FIRST USE IN COMMERCE: 20010200
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	78054562
Filing Date	March 22, 2001
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 15, 2002
Registration Number	2716560
Registration Date	May 13, 2003
Owner	(REGISTRANT) NuTru, Inc. CORPORATION ILLINOIS 6865 N. Lincoln Avenue Lincolnwood ILLINOIS 60646
Attorney of Record	Andrew P. Soderna
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark	OSTEO-AIDE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: DIETARY SUPPLEMENT CONTAINING CALCIUM SALT. FIRST USE: 20030315. FIRST USE IN COMMERCE: 20030315
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76385521
Filing Date	March 18, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 31, 2002
Registration Number	2762662
Registration Date	September 9, 2003
Owner	(REGISTRANT) Jointhealth.org, Inc. CORPORATION INDIANA 300 W. Jennings #102B Newburgh INDIANA 47630
Attorney of Record	Nick Cirignano
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	OSTEO-SIZE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: DIETARY NUTRITIONAL SUPPLEMENT CONTAINING CALCIUM, GLUCOSAMINE AND CHONDROITON FOR BONE AND JOINT SUPPORT. FIRST USE: 20010315. FIRST USE IN COMMERCE: 20010616
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76277769
Filing Date	June 25, 2001
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 9, 2002
Registration Number	2588169
Registration Date	July 2, 2002
Owner	(REGISTRANT) PROGRESSIVE LABORATORIES, INC. CORPORATION TEXAS 1701 WEST WALNUT HILL LANE IRVING TEXAS 750387962
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark OSTEOP-SITE
Goods and IC 010. US 026 039 044. G & S: Medical device, namely, a bone biopsy/infusion needle. FIRST
Services USE: 20000103. FIRST USE IN COMMERCE: 20000103
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 75826952
Filing Date October 19, 1999
Current Filing
Basis 1A
Original Filing
Basis 1B
Published for
Opposition June 13, 2000
Registration
Number 2450167
Registration Date May 8, 2001
Owner (REGISTRANT) Cook Incorporated CORPORATION INDIANA P.O. Box 489 Bloomington
 INDIANA 47402
Attorney of Record C. David Emhardt
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	OSTEO-PIN
Goods and Services	IC 010. US 026 039 044. G & S: bioresorbable pins used in dental, orthodontic, periodontic and oral surgery and procedures. FIRST USE: 20000302. FIRST USE IN COMMERCE: 20000302
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75534736
Filing Date	August 11, 1998
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	August 10, 1999
Registration Number	2621670
Registration Date	September 17, 2002
Owner	(REGISTRANT) Luitpold Pharmaceuticals, Inc. CORPORATION NEW YORK One Luitpold Drive Shirley NEW YORK 11967
Attorney of Record	PETER S REICHERTZ
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	OSTEO-TITE
Goods and Services	IC 010. US 026 039 044. G & S: MEDICAL APPARATUS, NAMELY COATED BONE SCREWS. FIRST USE: 19980500. FIRST USE IN COMMERCE: 19980500
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75430442
Filing Date	February 6, 1998
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 8, 1998
Registration Number	2269876
Registration Date	August 10, 1999
Owner	(REGISTRANT) AMEI TECHNOLOGIES INC. CORPORATION DELAWARE 1105 North Market Street, Suite 1300 Wilmington DELAWARE 19899
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	S. Roxanne Edwards
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark	OSTEO PROTECT
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: vitamin preparations; namely, a vitamin and mineral preparation for strengthening bone and teeth, sold through a mail-order operation and retail stores having common ownership with applicant. FIRST USE: 19950402. FIRST USE IN COMMERCE: 19950402
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75196593
Filing Date	November 12, 1996
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	May 7, 2002
Registration Number	2599865
Registration Date	July 30, 2002
Owner	(REGISTRANT) GEORGIA BARIATRICS, P.C. CORPORATION GEORGIA 2904 MACON ROAD COLUMBUS GEORGIA 31906
Attorney of Record	LAURENCE P COLTON
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark	OSTEOGRAF
Goods and Services	IC 010. US 044. G & S: SYRINGES AND HYDROXYLAPATITE NON-RESORBABLE BONE GRAFTING MATERIAL FOR AVEOLAR RIDGE AUGMENTATION. FIRST USE: 19850912. FIRST USE IN COMMERCE: 19850912
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73567502
Filing Date	November 8, 1985
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	May 27, 1986
Registration Number	1405669
Registration Date	August 19, 1986
Owner	(REGISTRANT) COORS BIOMEDICAL COMPANY CORPORATION DELAWARE SUITE 210 12860 W. CEDAR DRIVE LAKEWOOD COLORADO 80228 (LAST LISTED OWNER) CERAMED DENTAL, L.L.C. LTD LIAB CO DELAWARE 12860 WEST CEDAR DRIVE LAKEWOOD COLORADO 80228
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	JAMES B. BIERBER

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20061124.
Renewal 1ST RENEWAL 20061124
Live/Dead
Indicator LIVE

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OSTEOTECH

Word Mark Goods and Services

OSTEOTECH

(CANCELLED) IC 010. US 026 039 044. G & S: [SURGICAL KITS CONSISTING PRIMARILY OF SURGICAL GOWNS, SPONGES, DRAPES, TRAYS, TAPE, GLOVES AND INSTRUMENTS FOR USE IN SURGICAL ROOMS DURING SURGICAL PROCEDURES]. FIRST USE: 19871230. FIRST USE IN COMMERCE: 19871230

IC 005. US 018 044. G & S: ALLOGRAFT MATERIAL, NAMELY HUMAN BONE AND RELATED TISSUE FOR USE IN GRAFTS AND TRANSPLANTS; AND ALLOGRAFT TISSUE RECONSTITUTION SOLUTIONS. FIRST USE: 19861117. FIRST USE IN COMMERCE: 19861117

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Design Search Code

Serial Number 73795614

Filing Date April 24, 1989

Current Filing
Basis 1A

Original Filing
Basis 1A

Published for
Opposition February 6, 1990

Change In
Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 1593781
Registration Date May 1, 1990
Owner (REGISTRANT) OSTEOTECH, INC. CORPORATION DELAWARE 1151E SHREWSBURY AVENUE SHREWSBURY NEW JERSEY 07701
Attorney of Record Lisa A. Osman
Prior Registrations 1448120;1546270
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. PARTIAL SECT 8 (6-YR). SECTION 8(10-YR) 20000719.
Renewal 1ST RENEWAL 20000719
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark OSTEOCURE
Goods and IC 010. US 044. G & S: BONE GROWTH STIMULATION DEVICE. FIRST USE: 19880505.
Services FIRST USE IN COMMERCE: 19880505
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 73770681
Filing Date December 21, 1988
Current Filing Basis 1A
Original Filing
Basis 1A
Published for
Opposition July 4, 1989
Registration
Number 1557819
Registration Date September 26, 1989
Owner (REGISTRANT) OSTEODYNE, INC. CORPORATION NORTH CAROLINA 4420
 DARBENTRY COURT CHARLOTTE NORTH CAROLINA 28226
Assignment
Recorded ASSIGNMENT RECORDED
Attorney of Record KATHLEEN S. TAYLOR
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	OSTEO-MESH
Goods and Services	(CANCELLED) IC 010. US 044. G & S: SURGICAL MANDIBULAR MESH PROSTHESIS - NAMELY, A MANDIBULAR TRAY AND SURGICAL IMPLANT - NAMELY, CRANIAL FAIRING. FIRST USE: 19821216. FIRST USE IN COMMERCE: 19821216
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73835747
Filing Date	November 3, 1989
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 3, 1990
Registration Number	1603581
Registration Date	June 26, 1990
Owner	(REGISTRANT) XOMED, INC. CORPORATION DELAWARE 6743 SOUTHPOINT DRIVE NORTH JACKSONVILLE FLORIDA 32216
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	STEPHEN CHESNOFF
Prior Registrations	1468753
Type of Mark Register	TRADEMARK PRINCIPAL

Live/Dead
Indicator

DEAD

Cancellation
Date

December 30, 1996

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Typed Drawing

Word Mark OSTEOCARE
Goods and IC 010. US 044. G & S: BONE GROWTH STIMULATION DEVICE. FIRST USE: 19880303.
Services FIRST USE IN COMMERCE: 19880303
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 73770692
Filing Date December 21, 1988
Current Filing Basis 1A
Original Filing
Basis 1A
Published for
Opposition June 27, 1989
Registration
Number 1556682
Registration Date September 19, 1989
Owner (REGISTRANT) OSTEO-DYNE, INC. CORPORATION NORTH CAROLINA 4420
 DARBENTRY COURT CHARLOTTE NORTH CAROLINA 28226
Assignment
Recorded ASSIGNMENT RECORDED
Attorney of Record KATHLEEN S. TAYLOR
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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OsteoAnalyzer

Word Mark	OSTEOANALYZER
Goods and Services	(CANCELLED) IC 010. US 044. G & S: DIAGNOSTIC RECTILINEAR SCANNERS FOR USE ON PATIENTS IN DETECTING BONE DISORDERS. FIRST USE: 19850307. FIRST USE IN COMMERCE: 19850307
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Design Search Code	
Serial Number	73537742
Filing Date	May 15, 1985
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	February 25, 1986
Registration Number	1419070
Registration Date	December 2, 1986
Owner	(REGISTRANT) OSTEON, INC. CORPORATION HAWAII STE. 102, P.O. BOX 430 649 CALIFORNIA AVE. WAHIAWA HAWAII 96786
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ANALYZER" APART FROM THE

MARK AS SHOWN

Description of Mark THE INITIAL LETTER "O" OF "OSTEOANALYZER" IS INTENDED TO REPRESENT THE CROSS SECTIONAL VIEW OF THE CORTICAL BONE IN THE RADIUS. THE OUTER "O" REPRESENTS THE OUTER EDGE OF THE BONE, AND THE INNER FIGURE REPRESENTS THE INNER EDGE OF THE CORTEX.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date June 7, 1993

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Platform

Word Mark	PLATFORM
Goods and Services	IC 031. US 001 046. G & S: Animal feed. FIRST USE: 20050401. FIRST USE IN COMMERCE: 20050401 IC 005. US 006 018 044 046 051 052. G & S: Dietary and/or nutritional supplements. FIRST USE: 20050401. FIRST USE IN COMMERCE: 20050401
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78486096
Filing Date	September 20, 2004
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	November 22, 2005
Registration Number	3178003
Registration Date	November 28, 2006
Owner	(REGISTRANT) Farnam Companies, Inc. CORPORATION ARIZONA 301 West Osborn Road Phoenix ARIZONA 85013
Assignment Recorded	ASSIGNMENT RECORDED
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark PLATFORM MULTI-NUTRIENT FORMULA
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: multi-nutrient formula containing over 100 components. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020101
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78051174
Filing Date March 2, 2001
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition January 29, 2002
Registration Number 2626687
Registration Date September 24, 2002
Owner (REGISTRANT) Delano Company, Inc CORPORATION NEVADA 750 Farroll Rd Unit H Grover Beach CALIFORNIA 93433
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MULTI-NUTRIENT FORMULA" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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PLATFORM

Word Mark	PLATFORM
Goods and Services	IC 010. US 026 039 044. G & S: ORTHOPEDIC IMPLANT, NAMELY, A HIP PROSTHESIS. FIRST USE: 20060100. FIRST USE IN COMMERCE: 20060200
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78676302
Filing Date	July 22, 2005
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 24, 2006
Registration Number	3326479
Registration Date	October 30, 2007
Owner	(REGISTRANT) T J SMITH & NEPHEW LIMITED CORPORATION UNITED KINGDOM POST OFFICE BOX 81 101 HESSLE ROAD HULL HU3 2BN UNITED KINGDOM
Attorney of Record	Brewster Taylor
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	PLATFORM
Goods and Services	(CANCELLED) IC 010. US 026 039 044. G & S: catheters. FIRST USE: 19951120. FIRST USE IN COMMERCE: 19951120
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74648251
Filing Date	March 17, 1995
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	October 24, 1995
Registration Number	2034348
Registration Date	January 28, 1997
Owner	(REGISTRANT) SCIMED Life Systems, Inc. CORPORATION MINNESOTA One SCIMED Place Maple Grove MINNESOTA 553113648
Attorney of Record	Wayne A. Sivertson
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Cancellation Date	November 1, 2003

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Typed Drawing

Word Mark	PLATFORM-SLUSH
Goods and Services	IC 010. US 026 039 044. G & S: medical and surgical equipment, namely, warming and cooling units for solutions, slush making machines, sterile drapes and sterile filters. FIRST USE: 19970400. FIRST USE IN COMMERCE: 19970400
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75013038
Filing Date	October 31, 1995
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	July 16, 1996
Registration Number	2100064
Registration Date	September 23, 1997
Owner	(REGISTRANT) O.R. SOLUTIONS, INC. CORPORATION VIRGINIA 3901 CENTERVIEW DRIVE SUITE W Chantilly VIRGINIA 20151
Prior Registrations	1868864
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SLUSH" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

EXHIBIT 2

Google

define:osteo- or oste

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Web

Definitions of **osteo-** or **oste** on the Web:

- Greek prefix meaning bone.
www.horseshoes.com/glossary/o/glsro.htm

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Platform

From Wikipedia, the free encyclopedia

The word **platform** is used in several different contexts, usually referring to some kind of standing surface used to support things, give them stability, or visibility:

- Railway platform, an area at a train station to alight from/embark on trains or trams.
- Political platform, a list of principles held by a political party to appeal to the public.
 - Platformism, in anarchist politics, refers to organising in the tradition of Nestor Makhno's Organizational Platform of the Libertarian Communists.
- Platform (Scottish politics), an openly organized faction within a Scottish left-wing political party
- Platform (computing), in computing and technology, refers to a framework on which applications may be run.
- Platform (military), in military technology, refers to a capability for military action, for example, a military ship, aircraft, headquarters or even the human individual.
- Platform cover, in geology, refers to the sedimentary deposits that lie on top of the craton's platform.
- Platform game, a genre of video games characterized by the player having to jump platforms
- Platform (geology), the part of a continental craton that is covered by sedimentary rocks.
- Oil platform, a structure built for oil production
- Automobile platform, a set of components shared by several vehicle models
- Platform shoe, a kind of shoe with a thick sole
- Continental platform, in geology, the low depth sea area next to the continent
- Platform, in the swimming pool context, a flat surface, usually made of cement, and typically 3, 5, 7.5, or 10 meters above the water surface, from which bathers jump into the baths located below the platform.
- Jumping platform, naturally occurring platforms, or platforms made in an ad-hoc way for cliff jumping
- *Platform* (film), a 2000 film by Zhang Ke Jia
- *Platform* (novel), a 2001 novel by Michel Houellebecq
- Software development platform such as Mono development platform

Retrieved from "<http://en.wikipedia.org/wiki/Platform>"

Category: Disambiguation

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platform

Dictionary



plat·form (plăt'fôrm')

n.

- a. A horizontal surface raised above the level of the adjacent area, as a stage for public speaking or a landing alongside railroad tracks.
- b. A vessel, such as a submarine or an aircraft carrier, from which weapons can be deployed.
- c. An oil platform.
2. A place, means, or opportunity for public expression of opinion: *a journal that served as a platform for radical views.*
3. A vestibule at the end of a railway car.
4. A formal declaration of the principles on which a group, such as a political party, makes its appeal to the public.
5.
 - a. A thick layer, as of leather or cork, between the inner and outer soles of a shoe, giving added height.
 - b. A shoe having such a construction.
6. **Computer Science.** The basic technology of a computer system's hardware and software that defines how a computer is operated and determines what other kinds of software can be used.
7. **Geology.**
 - a. A flat elevated portion of ground.
 - b. The ancient, stable, interior layer of a continental craton composed of igneous or metamorphic rocks covered by a thin layer of sedimentary rock.

[French plate-forme, diagram, from Old French : plat, flat; see plate + forme, form (from Latin fôrma).]

↓ **more articles below...**

Technology



platform

A hardware and/or software architecture. The term originally dealt with only hardware, and it is still used to refer to a CPU model or computer family. For example, the x86 PC is the world's largest hardware platform. IBM's iSeries (AS/400) and Sun's SPARC are also examples of hardware platforms (see hardware platforms).

Hardware and Software

Very often, the term refers to an operating system, and the hardware is implied. For example, when an application is said to "run on the Windows platform," it means that the program has been compiled into the x86 machine language and runs under Windows. It implies x86 because Windows runs mostly on x86 PCs.

The term may also refer to other than desktop and laptop computers. For example, the Xbox and Playstation are gaming platforms, and Palm and Windows CE are PDA platforms.

The Hardware May Not Be Implied

Since a variation of Unix runs on many hardware platforms, the phrase "the program runs on the Unix platform" is imprecise. It generally means that the application runs on the most popular Unix workstations or servers, but you would have to find out which ones to be sure (see Unix).

Software Only

Platform also refers to software-only environments. For example, a messaging platform or groupware platform implies one or more programming interfaces that e-mail, calendaring and other client programs are written to in order to communicate with the services provided by the server.

The terms "platform" and "environment" are often used interchangeably. See environment.

- Find the latest news, features and reviews relating to "platform" from CMP's TechSearch.

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Business Terms ⬆

I

Platform

The standards that set the parameters for what a system can and cannot do; generally refers to the microprocessor and/or the operating system. The term cross-platform refers to applications, formats, or devices that work on different platforms.

Thesaurus ⬆

HOU
MIFFI
COMI

platform

noun

A temporary framework with a floor, used by workmen: scaffold, scaffolding, stage. See machine.

Politics ⬆

HOUGHT
MIFFLIN
COMPAN

platform


A political party's or candidate's written statement of principles and plans. A platform is usually developed by a committee at the party convention during a presidential campaign.

Word Tutor ⬆

Co

platform 🔊

IN BRIEF: A flat surface or stage higher than the ground or floor around it. Also: A publicly announced set of goals and principles; policy.

 I have stepped out upon this platform that I may see you and that you may see me, and in the arrangement, I have the best of the bargain. – Abraham Lincoln (1809-1865)

WordNet



Note: click on a word meaning below to see its connections and related words.

The noun platform has 5 meanings:

Meaning #1: a raised horizontal surface

Meaning #2: a document stating the aims and principles of a political party

Synonyms: political platform, political program, program

Meaning #3: the combination of a particular computer and a particular operating system

Meaning #4: any military structure or vehicle bearing weapons

Synonym: weapons platform

Meaning #5: a woman's shoe with a very high thick sole

Synonyms: chopine, chopines, platforms

Wikipedia



platform (computing)

In computing, a **platform** describes some sort of framework, either in hardware or software, which allows software to run. Typical platforms include a computer's architecture, operating system, or programming languages and their runtime libraries.

Hardware, operating system and virtual machine

In relation to hardware, *platform* often describes the set of hardware components that make up the computer itself, that the software is written to target (often just described as "written for an architecture"). Pure assembly language can be run on this hardware platform, but most commonly, operating system software is written to target it. But in doing so, it becomes a platform in itself, facilitating the running of other software that is used to target the operating system, and likewise the hardware architecture. Furthermore, software that is written for the operating system can be used to support the running of other software: for example a virtual machine (which targets a certain operating system/hardware) that is used to run other programs that are written for it, which constitutes another platform.

Java

Main article: Java Platform

Java programs are a typical example of the latter point. Java source code is "compiled" to an intermediate-language bytecode which is then interpreted by an interpreter, the JVM, which then interfaces that program with the Java software libraries. In phones, PDAs and other wireless mobile devices, these libraries

are the Java ME. Some phones, even without a full fledged OS, enable Java programs such as games to operate. Java and the bytecode are said to be platform independent. But this is because Java is the platform as well as a programming language. Software really cannot operate without a platform or be platform independent. The programming language is referred to here, meaning, the programmer need not be concerned about the platform, nor will the language change with a different platform.

.NET

Main article: .NET

.NET is Microsoft's answer to Sun's Java.

Role in software

A platform is a crucial element in software development. A platform might be simply defined as 'a place to launch software'. Platforms are frequently mentioned with APIs. A complete suite of APIs constitute another type of platform. Platforms frequently are referred to as operating systems as defined above. However they are not always the same thing. For example, 2 other popular non-OS platforms are Java, as mentioned above, and BREW for mobile phones.

Hardware examples

- Supercomputer architectures.
- DEC Alpha cluster running under OpenVMS.
- RISC processor based machines running UNIX variants (for example, Sun computers running the Solaris operating system).
- Macintosh, custom Apple Computer hardware and Mac OS operating system (now migrated on x86).
- Commodity computer platforms, such as
 - WIN32 (Wintel), that is, Intel x86 or compatible hardware and Windows operating system.
 - Lintel, that is, Intel x86 or compatible hardware and the Linux operating system.
 - x86 with other UNIX variants such as BSD variants.
- Old home computer microcomputers.
- Gumstix full function miniature computers and Linux
- A mainframe with its custom operating system, say an IBM System/360.
- Any variety of video game console.

Phone platforms

- BREW
- Helix
- Java ME
- Palm OS
- Qtopia
- S60 platform
- UIQ
- Symbian OS
- Windows Mobile
- Linux

See also

- Category:Computing platforms
- Computing
- Software engineering and List of software engineering topics
- Operating Systems
- Application Programming Interface

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Translations



Translations for: Platform

Dansk (Danish)

n. - perron, tribune, mølleomgang, partiprogram

Nederlands (Dutch)

podium, natuurlijke/ kunstmatige verhoging, perron, plan/ontwerp, booreiland, (hoofdpunt van) politiek platform, gelegenheid om iets te verkondigen, balkon van bus/tram etc., (mv) schoenen met plateuzolen

Français (French)

n. - estrade, tribune, plate-forme, (gén) plateau (pour véhicules), (Pol) plate-forme électorale, (Rail) quai, (fig) tremplin

Deutsch (German)

n. - Bahnsteig, Podium, Bühne, Plateausohle, Plattform

Ελληνική (Greek)

n. - εξέδρα, βήμα, αποβάθρα, πλατφόρμα, πολιτικό πρόγραμμα (κόμματος), ιδεολογική πλατφόρμα

Italiano (Italian)

cattedra, marciapiede, podio, piattaforma, passerella

Português (Portuguese)

n. - plataforma (f)

Русский (Russian)

платформа, перрон, помост, позиция, (политическая) программа

Español (Spanish)

n. - plataforma, tribuna, andén, estrado, tablado, tarima, pasarela, andamio

Svenska (Swedish)

n. - estrad, podium, plattform, perrong, platå, (parti)program

中文 (简体) (Chinese (Simplified))

月台, 坛, 讲台

中文 (繁體) (Chinese (Traditional))

n. - 月臺, 壇, 講臺

한국어 (Korean)

n. - 승강장, 대지, 강령

日本語 (Japanese)

n. - 壇, 演壇, プラットホーム, 綱領, 乗降口

العربية (Arabic)

(الاسم) خطه, برنامج, البرنامج السياسي, منصه, منبر, رصيف في محطة السكه الحديدية, منبسط الدرج أو سلم المبنى

עברית (Hebrew)

n. - רחבה, רציף, בימה, סוליה עבה, מישורת, מצע מפלגתי, פלטפורמה - n.

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

NOTICE OF APPEAL

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 9, 2007

In re Juvent, Inc.

Serial No. 78873139

Filed: 5/1/06

DAVID M. CARTER
CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 BROADHOLLOW RDSTE 225
MELVILLE, NY 11747

Tina Craven, Paralegal Specialist:

In view of the decision by the Trademark Examining Attorney on October 29, 2007, the appeal is resumed; and applicant is allowed until **sixty days** from the mailing date hereof in which to file its brief herein. A request for an oral hearing, if desired, must be made not later than ten days after the due date for applicant's reply brief.



Electronic System for Trademark Trials and Appeals

Receipt

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ESTTA Tracking number: **ESTTA169612**

Filing date: **10/18/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial No.	78873139
Applicant	Juvent, Inc.

Notice of Appeal

Notice is hereby given that Juvent, Inc. appeals to the Trademark Trial and Appeal Board the refusal to register the mark depicted in Application Serial No. 78873139.

Applicant has filed a request for reconsideration of the refusal to register, and requests suspension of the appeal pending consideration of the request by the Examining Attorney.

The refusal to register has been appealed as to the following class of goods/services:

- Class 010.
All goods and services in the class are appealed, namely: MEDICAL APPARATUS,
NAMELY, VIBRATION PLATES FOR THERAPEUTIC PURPOSES

Respectfully submitted,
/david m. carter/
10/18/2007

DAVID M. CARTER

Attorney for Applicants

CARTER, DELUCA, FARRELL & SCHMIDT, LLP

445 BROADHOLLOW RDSTE 225

MELVILLE, NY 11747

UNITED STATES

docket@cdfslaw.com

631-501-5700

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

OFFICE ACTION # 3

PMC

Status Check

4/29/08

(9)

To: Juvent, Inc. (docket@cdfslaw.com)
Subject: TRADEMARK APPLICATION NO. 78873139 - OSTEO PLATFORM - 1429-53
Sent: 10/29/2007 11:23:53 AM
Sent As: ECOM114@USPTO.GOV

Attachments:

Attachment - 1
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/873139

MARK: OSTEO PLATFORM

78873139

CORRESPONDENT ADDRESS:

DAVID M. CARTER
CARTER, DELUCA, FARRELL & SCHMIDT,
LLP
STE 225
445 BROADHOLLOW RD
MELVILLE NY 11747-3615

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Juvent, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

1429-53

CORRESPONDENT E-MAIL ADDRESS:
docket@cdfslaw.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/29/2007

Applicant is requesting reconsideration of a final refusal issued/mailed April 23, 2007.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the point at issue in the final action. TMEP §715.03(a).

Therefore, the request for reconsideration is **denied** and the final refusal is continued as follows. 37 C.F.R. §2.64(b); TMEP §715.04.

REFUSAL CONTINUED AND MAINTAINED

1) Descriptiveness Refusal

The applicant has applied for registration of the mark, OSTEO PLATFORM for "medical apparatus, namely, vibration plates for therapeutic purposes."

Registration was refused under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1), because the proposed mark is merely descriptive of applicant's goods, namely, vibrating plates forming a platform used for therapeutic purposes, including the treatment of bone related medical conditions such as osteoporosis and/or osteo-arthritis. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 et seq.

Applicant argues that the mark "may be suggestive at best" because the word "platform" in a different context connotes a "system on which programs or operating systems operate," referring to the use of the word "platform" to refer to computer programs.

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT PC-DOS found merely descriptive of "computer programs recorded on disk" where relevant trade uses the denomination "concurrent" as a descriptor of this particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985); *see* TMEP §1209.01(b).

The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Industries*, 222 USPQ 258 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Champion International Corp.*, 183 USPQ 318 (TTAB 1974); TMEP §1209.03(e). Thus, the fact that the word "platform" has some meaning related to computers and completely unrelated to applicant's platforms for osteoporosis patients is not relevant to the determination of descriptiveness. Likewise, the fact that a search on the Internet generates other meanings that are also unrelated to applicant's goods does not diminish the descriptiveness of applicant's mark in relation to applicant's goods.

Applicant also argues that the applicant is the only user of the combined terms in the mark and that this indicates that competitors do not need to use the combined terms. The fact that an applicant may be the first and sole user of a merely descriptive or generic designation does not justify registration where the evidence shows that the term is merely descriptive of the identified goods and/or services. *In re Acuson*, 225 USPQ 790 (TTAB 1985) (COMPUTED SONOGRAPHY descriptive of ultrasonic imaging instruments); *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983) (SHOOTING, HUNTING, OUTDOOR TRADE SHOW AND CONFERENCE held apt descriptive name for conducting and arranging trade shows in the hunting, shooting and outdoor sports products field); TMEP §1209.03(c).

As stated in the first office action dated August 25, 2006, a mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods and/or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright#Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). Here, each of the descriptive words in applicant's mark describes an attribute of applicant's goods. The word "osteo" describes the condition that is allegedly prevented, treated and/or relieved by applicant's goods and the word "platform" describes the nature and appearance of applicant's goods, namely vibrating plates in the form of a platform on which the user of the goods stands as the plates vibrate.

As shown by the pages from applicant's Internet site and other sites attached to this and the previous office actions, applicant's products include "vibration platforms" for use in the treatment of osteoporosis. The attached pages and articles also indicate that the term "osteo" is commonly used to describe osteoporosis and/or osteo-arthritis and the word "platform" is commonly used to describe vibrating exercise equipment containing vibrating devices and believed to prevent and/or mitigate these medical conditions. Thus, the common usage of these terms in relation to applicant's goods is descriptive. The combination of these terms to form applicant's mark does not create a different meaning or overall commercial impression.

Attached are copies of printouts from the USPTO X-Search database that show third-party registrations of marks for which the term "osteo" and the word "platform" are disclaimed. These printouts have probative value to the extent that they serve to suggest that these words are also descriptive in the context of applicant's goods.

Therefore, the combined wording OSTEO PLATFORM is descriptive of applicant's medical apparatus for treating osteoporosis and registration must be refused in accordance with the Trademark Act. Since the application was filed under Trademark Act Section 1(b) and the applicant has not filed an amendment to allege use, amending the application to seek registration on the Supplemental Register is not appropriate in this instance. 37 C.F.R. §2.47(d); TMEP §§815.02, 816.02 and 1102.03.

However, applicant is advised that, if applicant amends the application to allege use and to seek registration on the Supplemental Register, it will be necessary to disclaim the word "platform" if this word describes the common or class name for the goods or services. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001);

In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). Generic terms are by definition incapable of indicating a particular source of the goods or services, and cannot be registered as trademarks; doing so "would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are." *In re Merrill Lynch*, 828 F.2d at 1569, 4 USPQ2d at 1142.

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

The filing of a request for reconsideration does *not* extend the time for filing a proper response to the final action, which runs from the date the final action was mailed. 37 C.F.R. §2.64(b); TMEP §§715.03 and 715.03(c).

/Edward Fennessy/

Edward Fennessy

Trademark Examining Attorney

Law Office 114

1.571.272.8804

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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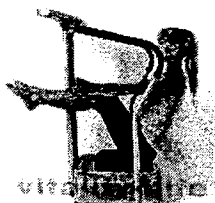
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- improved muscular strength
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- increased flexibility and range of motion
- enhanced critical blood flow throughout the body
- increased bone density
- acceleration of weight loss and reduced appearance of cellulite
- decreased cortisol levels and increased levels of the 'happiness hormones' serotonin and neurothrophine
- improved posture

"...what has been truly miraculous is how my crippling back pain is no longer troubling me! All those years of useless physio, chiro and **oste**o. I'm very grateful."

How the Vibration Exercise Platform works

Originally based on research by Russian space scientists to combat the effects of micro-gravity on cosmonauts, whole body vibration training has been adapted for uses covering almost all health requirements. A vibration **platform** induces rigidity of the muscle through the rapid contraction and vibration process in a short span of time. In other words, it is creating an excessive gravitational state by giving a vibrating motion to the muscle at the same time as you are creating tension to the muscle in various positions.

A one minute workout on this vibration **platform** burns more energy and creates strength improvements. This is achieved with minimal stress on the joints and ligaments. You can perform static or dynamic movements including standing, sitting, kneeling, lying, and placing your hands on it. **Almost any exercise** from a typical gym workout to passively sitting on a chair and resting your feet can be done on a vibration **platform**.

But don't take our word for it – try it for yourself. What used to be only affordable for those with the budget of a space program is now within your reach. With vibration machines to suit all needs and budgets, the Vitality range of vibration exercise platforms is suitable for in home or professional use. You can also see our brief online video for a demonstration of why this unique fitness equipment should be part of your home gym.

this unique fitness equipment should be part of your home gym.

"I have always suffered from bad circulation with cold feet that ache and cold hands...I have been amazed. It feels so wonderful to experience the feeling of the blood surging through my feet and body. I've noticed that my feet are no longer the purple color they have been for my entire life. Also, because it's in my house, the convenience is great."

Try it risk free with the Vitality 4 Life Approved Product guarantee!

Though vibration exercise has been practiced and proven for decades, you can have the chance to prove its effectiveness in your home, **risk free**. When a product is granted the Approved Product status, it means we are happy to offer for you to try the Vitality vibration exercise **platform** of your choice for one month and if you aren't completely satisfied, return the goods to us and we'll refund the purchase price.

"I have to admit that it already is making a difference, which seems to defy what I know of the speed at which muscle response occurs...The main area of gratitude is that my pain level has reduced down to about 10/15%, which is amazing, coming from a daily 70% level."

Don't settle for anything less than a Vitality 4 Life vibration exercise platform

At Vitality 4 Life, we strive to make home health affordable for all, but we won't compromise on quality. Our vibration machines have been tested and proven to be comparable to professional grade machines costing ten times more than what you can buy from us.

You can get cheaper machines than those we stock (so could we in fact!), but these don't come with Vitality 4 Life Approved Product status, based on the following strict criteria:

- Hundreds of hours of independent product testing
- Vitality 4 Life approved product Electrical Certification
- Quality of end consumer support material, eg. instruction manual
- Supplier assistance
- Manufacturer warranty
- Manufacturer background
- Quality of raw materials, assemblies, production and inspection processes.

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home?

You could be enjoying the benefits of using a vibration exercise **platform** in your home within days. Remember, you get a 100% risk free money back guarantee so you can try the Vitality 600 or Vitality 300 in your home. Simply click here to buy the Vitality 600 or the Vitality 300 online now. If you need more information, please email or phone us on 1800 802 924 (Australian callers) or +61 2 6680 7444 during business hours. Yes. I'm ready to experience the health giving benefits of vibration exercise in my home now...

Specifications

Maximum power 1.5 HP
Input voltage 220v / 50Hz
Input power 200W
Speed range 20
Amplitude 0-10mm
Maximum user weight 120kg
Assembly size L 735mm x W 695mm x H 1220mm
Net weight 45kg
Gross weight 49kg

Real life experiences with the Vitality vibration exercise platform

"In January I fell into my breakfast bar and smashed my arm. The breaks were so severe I had to have a massive pin from shoulder to elbow and I was told it will take nine to 12 months to rehabilitate. I was in hospital for four weeks and as I had complications I spent six days in I.C.U. I came straight home and went on my Vitality 4 Life vibrating machine (which was delivered while I was in hospital). I started at level three for a week then gradually went to level 13. Sometimes I would just put my hands on the plate. My arm is getting so much stronger, as a matter of fact my whole body is getting stronger so much so that I took my dog for a walk last week. She panicked at a loud noise and pulled me over straight onto my knees on concrete and I landed on my broken arm. I was in agony, my knees were swollen like a football and my arm jarred badly so with swollen sore knees I went back on the machine on level 3 for 3 days and I lost all the pain within 3 days.

There is no swelling at all, my arm has gone backwards only slightly now and I am going to go easier on myself again E.g. No walking the dog for a while.

Another benefit I have found is that the cellulite I carry has dissipated and folds around my stomach are getting tighter. My daughter comes over and

uses it 3 to 4 days a week. She had lost inches. Her clothes are starting to get loose on her and she is feeling fitter. My sister fell off a four story building and broke most of her bones. She loves it and says she feels taller and stronger and says she is losing fluid off her legs. She is buying one soon as she wants her husband and kids to start using it.

Honestly I think this machine is great. I just love it and with a money back guarantee, how can you go wrong."

Kimberley Rauchelle (address supplied)

"I have been using the vibrating platform for approximately 8 weeks and during that time I have noticed a big improvement in my strength, flexibility and sciatic nerve problem. My work out is as follows; on medium speed 4 or 5 for 5 minutes doing standing poses, 5 minutes arm and shoulder strengthening and 5 minutes sitting poses.

I find every second day is more than enough with the lay day 5 minutes at the lowest speed to recover doing a variance of all poses used during the 15 minute session.

I find it superior to conventional gym work, stronger results and less time ie 15 minute sessions to minimum of 1 hour."

D. Cahill (address supplied)

"At first I could not figure out what to do with the vibration machine. Of course it was easy to step on it and let it buzz me silly. This certainly can raise a pack of energy.

But it took a month of daily experiments to realise the full effect I could create with the vibration machine. Here are some of my fun discoveries:

- In the beginning I did short sessions, gradually increasing the length to 10 minutes after a week or so... - I can direct the vibrations in different parts of my body, for example by shifting my weight from one leg to the other, balance forward sideways and backwards. - By changing my height from my legs I feel the vibes reach different parts of my spine. - Although I am not very advanced, yoga postures was a plus because it relaxed me during holding the positions. - I loved sitting on the machine maybe especially because of my back pain. This helped me to relax. - Leaning further backwards, the experience is different. - Letting go of the handle bar and finding where the vibration goes, then directing the vibes in various places in my body. - With hands parallel to the ground, keep breathing... - With hands up in the air... relax, keep breathing. - Breathing with the vibration and making a soft sounds from the belly. - Hands parallel to the ground and a (soft plastic) bottle filled with water on your

parallel to the ground and a (soft plastic) bottle filled with water on your head... no, it is not a joke, it is a great way to develop your sense of balance and relaxation.

For me the ultimate was when I made my body resonate with the vibration machine. I highly recommend it and although it is more difficult to attain, the results are great. Here is a description of how to develop this resonance:

- firstly, shake loosely your body while the vibration machine is on at low speed. Just move each part and if one part does not move easily, keep moving it until you feel relaxed. Do this a few times to get accustomed and loose. - After several fun sessions, try to find a place where it becomes easy to have your body just shake, undulate, and prolong the times when it goes by itself. - When you are familiar with this, find the resonant point by setting your body loose and shaking in rhythm with the vibration machine. Be patient, it is like finding the resonant note in your bathroom... takes time but when you hit it, it's amazing... - Keep resonating until there is nothing to do anymore: body and machine are in synchronisation. You can vary the speed of the vibration machine to obtain different effects.

Wow, this is truly amazing and rejuvenating. Once you have the knack of it, you will feel a deep energising, then relaxation.

In conclusion, this vibration machine is a great tool for many applications and I will highly recommend it to many people that do not know they needed it!

by Ariel Kalma (address supplied)

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09-19-2006, 04:35 PM

#6

PikaB

Senior Member
(mate)

Join Date: Apr 2006
Location: Tempe, AZ
Posts: 134

Re: vibration therapy

Quote:

Originally Posted by **Crohnietoo**

PikaB, how did you find out about the electromagnetic radiation? The Soloflex seems to be the only vibrating therapy w/in financial reach of the average retired Jane or John Doe so I've been giving serious consideration to buying one.

I found out about the radiation by using an ELF monitor (extremely low frequency electronic radiation monitor), which I had purchased years ago, when there were worries about the radiation coming from computer screens and TV sets. The electromagnetic radiation is only high near the surface of the **platform** center, so hopefully it won't

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high near the surface of the platform center, so hopefully it won't affect feet and ankles anyway. I made a short video of the ELF test, but I don't think it is permissible for me to post a link to that video.

There is another machine in the same price range as the Soloflex WBV, namely the Health Mark Fibrafit, but to me it looks even more iffy, based on the product description. ☺ And the Health Mark Fibrafit has a much smaller **platform**, so if it also has high surface levels of electromagnetic radiation, you can't stand toward the edge the way you can on the Soloflex.

Quote:

Originally Posted by **DesertBloom**

*Can you tell me if you are just using this for **osteo**? I've read that it can help with pain from OA, fracture pain, etc... Are you using it for pain as well, and if so, does it help?*

No, I'm not using it for pain. Just for (hopefully) **osteo** and general health. ☺

Last edited by PikaB : 09-19-2006 at 04:37 PM. Reason: Misspelled word "effect" should be "affect"



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From our Health Guide: Osteoporosis Health Center

09-19-2006, 06:14 PM

#2

DesertBloom •

Re: vibration therapy

Senior Veteran
(female)

Join Date: Aug 2006
Location: CA, USA
Posts: 1,092

Quote:

Originally Posted by **PikaB**

*No, I'm not using it for pain. Just for (hopefully) **osteo** and general health. ☺*

Thanks for the info... I hope you get the results you are hoping for, for your general health and **osteo**.

I'm looking for anything that might help increase bone density, and if it would help the pain that would be a great plus too.

Are you using the Soloflex with a combination of exercises, or do you just stand on it? I read the user manual, and looked at the different ways to use this, and was curious how you were doing it.

Good Luck, and let us know if it works...



09-20-2006, 10:43 AM

#8

PikaB •

Re: vibration therapy

Senior Member


Quote:


(male)

Join Date: Apr 2006
Location: Tempe, AZ
Posts: 134

Originally Posted by **DesertBloom**

...Are you using the Soloflex with a combination of exercises, or do you just stand on it? I read the user manual, and looked at the different ways to use this, and was curious how you were doing it....

Well, since you asked...

I wear five pounds of shoulder weights while on the WBV **platform**, because I think shoulder weights should increase the effect on bones. And it makes logical sense to me that some sort of movement should be more beneficial than just simply standing on the **platform**. As part of my daily **non-platform** exercises, I do 45 minutes of Dao Yin (Chinese movement exercises, sorta like Tai Chi but easier). After experimenting with a few exercises on the WBV **platform**, I settled on the Dao Yin exercise "Shouldering the Sun and Moon" because for me it feels right. That exercise involves arm movement and turning at the waist, but the feet do not move, and the knees do not bend. That's my basic exercise for the 10 minutes that I'm on the WBV **platform**. 

 Quote

11-04-2006, 07:43 PM


#9

mama carlota


Junior Member
(female)

Join Date: Mar 2006
Location: Mexico City, Mexico
Posts: 24

Re: vibration training


 Hi, PikaB, I have a dumb question. I have purchased the Soloflex and just read the post about the electromagnetic radiation. What does this affect? Will it affect my thyroid problems? I have been using it and seem to be feeling some benefits, but don't want to mess up my thyroid problems. Thanks, Mama Carlota

 Quote

11-05-2006, 12:03 PM

#10

PikaB


Senior Member
(male)

Join Date: Apr 2006
Location: Tempe, AZ
Posts: 134

Re: radiation?

I don't really know what effects that level of electromagnetic radiation would have. But if you are standing on the **platform**, the strong radiation doesn't go much above your ankles, so I don't think that using it for such a short period of time would have much of an effect, as long as you don't sit or lie on the **platform**.

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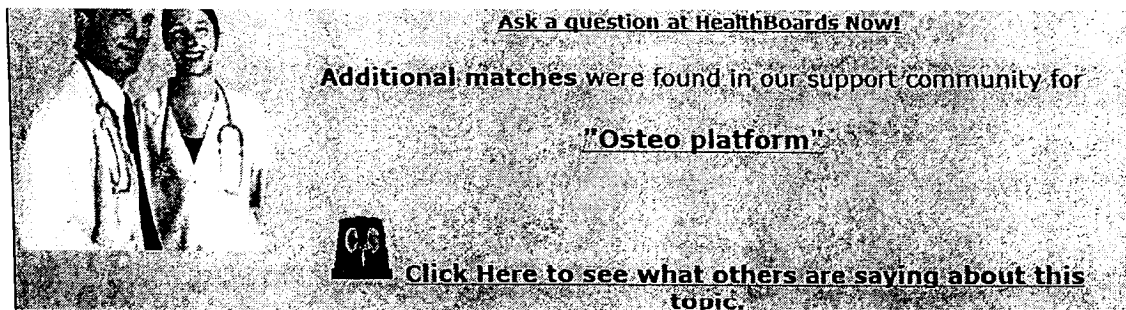
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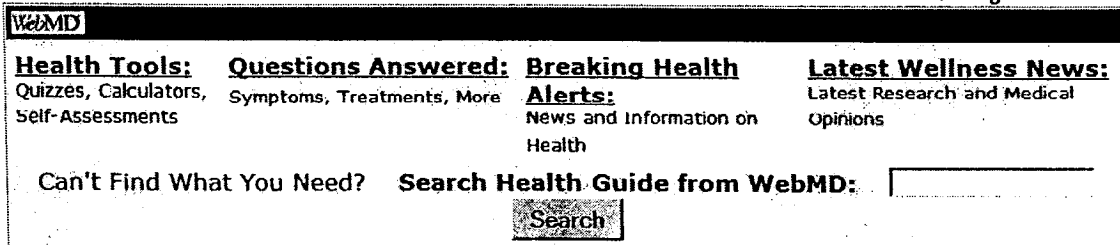
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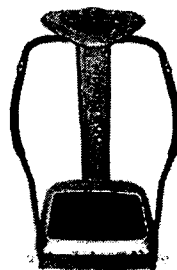
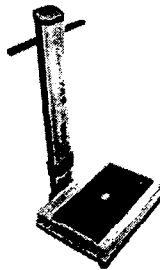
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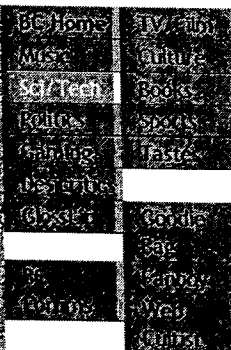
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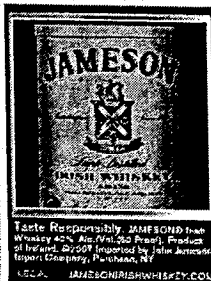
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OPINION

The Healthy Skeptic: First Impressions of the Soloflex Whole Body Vibration Platform

Written by Sal Marinello
Published August 07, 2007
Part of The Healthy Skeptic

I was able to score a Soloflex Whole Body Vibration (WBV) contraption from a client whose husband had been impressed by Soloflex's fantastic claims with regard to what their vibrating **platform** could do. After using the WBV for a couple of weeks, he abandoned the **platform** and it had been collecting dust in the garage. As my client was complaining one day about how he wasted his money on two - two! - of these things and wasn't using either of them, I pounced



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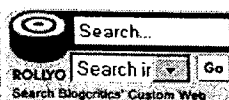
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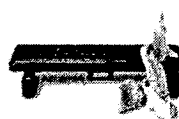
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and asked if I could borrow one.

Of course, she said yes.



Let's start by talking about the **platform** itself. The WBV's dimensions are similar to those of the old school Reebok step-up platforms that hit the scene in the 80s – though not as high off of the ground – and are smaller than I would have imagined. From the images in the manual you get the impression that the **platform** is bigger than it actually is. With my size 9.5 feet, my shoes are longer than the **platform** is wide, so when I stand on the device my feet hang off in front and in back. The length is also on the short side, so anyone that's over 5' 8" won't be able to perform a proper lunge, or many other of the recommended moves, on the **platform**.

Speaking of the manual, it is a tribute to misinformation. On the front page the Soloflex folks provide us with a lesson in "over-extrapolation" when they tell us that, "Gravity is acceleration. Gravity can be induced by resisting a load (e.g. lifting weights), and now, by mechanical means (WBV). That means you can stand still on a WBV **Platform** and get a good workout." Stand still and get a good workout? Research certainly does not back up this statement.

The back page – under the bold heading "It works for doggies, too," – the manual tells us that, "The Soloflex WBV **Platform** (\$495) along with static exercise, works like a moderate weightlifting program." Taking into account the results of recent research, it's being kind to say that this statement is a stretch. Unless of course Soloflex is referring to *dogs* lifting weights versus standing, or sitting, on the **platform**.

On the inside of the manual it says, "Just standing on a WBV **platform** will make you sweat." I can tell you flat out that I stood on this **platform** for 10 minutes and did not break a sweat. In contrast, when I perform dynamic flexibility exercises I start sweating at around the 4-minute mark, as do my clients.

The manual also recommends visiting the Soloflex website to learn more about WBV but all that is provided are the same inconclusive and flawed studies that have been touted by the other WBVs as proof.

Here's a little tip. When you read about a study in which positive results were achieved, be less impressed by the results if "older," "untrained" or "sedentary" individuals were the subjects and if the study lasted 10 weeks or less.

Week Eight



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Older, untrained and/or sedentary individuals are often used as subjects in studies because they are almost certain to show improvement when any kind of regular exercise or activity is introduced into their lives. The human body will always respond to exercise and activity regardless of how long it has been deprived of it. Older untrained/sedentary subjects will show more relative improvements than their younger counterparts, as older folks have had more time to fall into disrepair. Some of the most startling improvements have been found in studies involving the oldest and most sedentary members of the population.

Studies that last less than 10 weeks should be viewed with a discerning eye, especially if the study also employed the above mentioned older/sedentary group. With the introduction of any new activity, any improvements found during the first 2 months are due to neural factors - learning - not increased muscle mass/strength. Simply put, as people learn new tasks they get better at doing them. Only after this initial learning phase can the impact of an activity or exercise on an individual be judged. By the way, this study from the University of New Mexico that discusses the adaptations to exercise serves as a great rebuttal to the folly being perpetrated by the pro- WBV crowd.

It really should be no surprise that the manufacturer of a WBV device would use the results of studies in this manner. If you've read my other pieces on this subject, you're familiar with that old chestnut.

The WBV **platform** produces an awful vibration and sound when you plug it in and turn it on, and depending on where you have the **platform** it's varying degrees of god-awfulness. On a wood floor, upstairs on a wood floor or anywhere upstairs for that matter, on ceramic tile or on carpeting. Pretty much any where you put this thing it creates quite a racket. Even in my basement on a thick rubber mat the sound was ridiculously unpleasant.

As a matter of fact, one of the reasons that my client's husband stopped using the WBV was because of its inconvenience of use.

So for the sake of my continued domestic bliss I brought the **platform** to my training facility where the larger area and rubber flooring can somewhat dampen the sound produced by the WBV. In my totally non-scientific sampling of opinions, the results are unanimous in that people would never buy this equipment knowing that it produced this vibration/sound. It's really that loud.

To stand on this **platform** is an extremely unpleasant experience. The vibrations rattle your teeth and are every bit as unpleasant - if not more so - than the sensations encountered when doing real

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exercise. Ten minutes stretching on the Soloflex WBV seems like 2 hours, and for the Soloflex people – or any WBV proponent – to make the case that sedentary individuals would find this method of "exercise" appealing is to be totally unaware of the nature of people who dislike exercise.

The person who is turned off by the idea of walking around the block or climbing steps several times a day is NOT going to stand on this **platform** for 10, 20 or 30 minutes, let alone perform flexibility moves or weight lifting exercises on it.

For anyone who is over 5' 8" and can handle a decent amount of weight while performing exercises, the Soloflex WBV **platform** won't get the job done. I can't see how anyone using dumbbells of 50 pounds or more will feel comfortable standing, squatting, lunging or pressing this weight while standing on the smallish **platform**. Given the research that indicates the vibrations need to be closer to targeted areas for there to be a chance for WBV to have any effect, there's no reason to bother with any upper-body exercises anyway.



But despite all of my reservations regarding the Soloflex WBV, I will continue to use it and report back on my experiences. And if I can get any of my staff or clients to give it a shot, I'll be sure to include their comments in future entries. Although for what it's worth the Soloflex WBV, thanks to the noise and sensation, has turned off several clients and all staff alike. And these folks aren't even aware of the shaky research grounds on which its use is based.

Stay tuned.

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Sal Marinello is a National Strength and Conditioning Association Certified Strength and Conditioning Specialist and Certified Personal Trainer, a U.S.A. Weightlifting Certified Coach, a full-time, private Professional Strength and Conditioning Coach, an assistant football coach and a Head Strength Coach for a suburban New Jersey High School. He writes a lot and has no free time.

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Published: August
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Type: Opinion
Section: Sci/Tech
Filed Under: Sci/Tech:
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Comments

#1 - August 9, 2007 @ 03:07AM - TC [URL]
Hello Sal,
Thank you for testing on SOLOFLEX and pointing out all the
disadvantages of this particular device. However, trying on a
poor vibration training device is not the correct way to
evaluate the concept and the effect of this training technique.
Let me quote two examples:

your info sucks
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Example 1:

I heard from TV news a month ago, someone in China bought a very cheap piston-controlled height adjustable office chair. Just a short while after she brought it home, the piston under the chair exploded for unknown reason while the lady was sitting on it. The lady's buttocks were seriously injured and was sent to hospital. Put it in your way of thinking in evaluating WBV by trying on SOLOFLEX, perhaps we all shall keep away from chairs with piston, BECAUSE THEY ARE ALL DANGER!!

Example 2:

Someone puts a 5W light bulb on the ceiling in the sitting room and complain light bulb is useless in lighting. Where is the problem in this scenario?

I am glad after many of us who stand for WBV, urging you to give it a try, you finally did. Unfortunately, you picked the wrong device for your first time experience on WBV.

Let me point out some problems with SOLOFLEX and your trial:

Regarding SOLOFLEX:

1) SOLOFLEX quote the studies on WBV to support their product is misleading because their specifications are not even closed to the devices that were used in most of the studies.

2) Although SOLOFLEX omitted to state the loading capacity of the its motor. It must be weak by learning that the whole device weighs only 35 lbs. If their motor was powerful, its weight would not be able to hold itself on floor and it would dance around. I did not read such happening from your thread so I guess it stays firm on floor while working. So, this confirm my guess that it is weak. For a decent WBV unit, its motors can generate tenth of G-force gravitational load, it therefore requires a heavy base, no less than 50 kg (100 lbs.) for home model or 100 kg. (200+ lbs.) for professional model!!

3) A WBV platform without handrail is also dangerous because a decent device will create a wobbling action. The design of SOLOFLEX indicates either its designer is lack of knowledge or

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SOLOFLEX indicates either its designer is lack of knowledge or this device is "too gentle" for either therapy or training, it may help a bit in promoting circulation but no more.

4) Using of external weight like dumbells or barbells. I have seen some WBV centres make use of external weights to enhance training effect especially for body-building and for elite sports. However, this kind of application should only be done in professional centre under supervision. For home use, I completely against it because the wobbling action of a WBV device will be a challenge to exerciser's balance, exerciser may get injury when one intends to reach out to regain balance but hands are holding weights.

Regarding Sal's comment:

1) Rattling teeth - yes it is a side effect of WBV especially with lineal mechanism and it is unpleasant. However, it can also be avoid. Firstly, if an exerciser is doing a stance pose, flex knees and raise heels a bit. Secondly, simply slightly open the jaw.

2) Ten minutes on WBV like two hours - this is very subjective and personal opinion. Most people who enjoy doing WBV because duration is short and managable both physically and mentally. To compare with running on treadmill or cycling on static bike in gym for 30~45 minutes, WBV becomes a easier task for majority who are laymen and not addicted to sports activities. However, you are also right, for some really lazy people, even 10 minutes of WBV is too much, holding a static position like squat for 30-sec. is too difficult. No one no service can cater all people. WBV is just another form of exercises among swimming, jogging, Yoga, Pilates, Aerobic Dance, doing machines in gym Let the people to make their own choices.

3) You sound against using laymen as subjects to study effect of WBV. Please understand except some athletic clubs using WBV as intervention in training program for elite sports, majority of WBV users are laymen, they receive WBV training for rehabilitation reason or for better health, general well-being. Recruiting laymen for studies make perfect sense to me.

4) You quote a study trying to challenge WBV studies of less

My response is actually not for Sal but for readers especially those who are new to vibration training; so that they would not be misled by Sal's bias.

TC

#4 - August 9, 2007 @ 08:10AM - sal m

TC:

in pointing out the shortcomings of WBV using the Soloflex product my aim is to keep unsuspecting consumers from spending their hard earned money on a product that does not - cannot - do what's it's advertised to do.

i appreciate your comments. however, in light of the lack of research that exists to support the use of WBV for the vast majority of the population, and the way WBV proponents have misused, overstated and corrupted the process of gathering and presenting data, WBV shouldn't be taken seriously.

as a consumer and someone who has seen all kinds of gimmicks and gadgets come and go, i am pointing out that the research the WBV proponents use to support this method does nothing of the kind and that recent research has indicated that WBV may only have a narrow application, if any. and certainly not for people who are capable.

WBV folks don't seem to like the fact that the actual studies are being looked at in detail. there is no such thing as exercise without movement no matter what people in the lab coats say.

#5 - August 9, 2007 @ 08:31AM - Di Heap

Hey Sal,

Watch who you are calling incapable. In New Zealand we have many elite athletes, big rugby players, sprinters, endurance athletes, cricket players and others who are very capable and yet they choose to pay \$'s to use Vibration Training Machines. They are not Soloflex brand though.

And Me. I'm just an average user of Vibration Training. I do

And Me. I'm just an average user of Vibration Training. I do some sport but not much over winter time here but I am definitely capable. I pay \$'s to use these machines and I wouldn't be doing that if there was no benefit to me in fitness and strength.

Please try out a decent machine and then report back.

#6 - August 9, 2007 @ 08:45AM - Lloyd Shaw [URL]

There are no studies on my site Sal. And I have been warning the public and yourself for ages about the bad marketers/manufacturers .

But I think I am rightly concerned though that your past statements like....

"this is nothing more than a bigger version of the electronic stim pads"

"an incredibly flawed premise such as WBV."

Makes you look completely biased and lacking the knowledge to critic technology of this type.

How can we trust you are even going to try a decent unit at some stage ?

#7 - August 9, 2007 @ 08:50AM - Lloyd Shaw [URL]

Sal.....

The machine is meant to move you , so you move back into place. Trust me there is a lot of exercise in that simple operation.

The one you have is only designed to move the money from your wallet.

#8 - August 9, 2007 @ 13:42PM - sal m

Di Heap:

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United States Patent 5423862

Orthopedic treatment apparatus

US Patent Issued on June 13, 1995

Inventor(s)

[James M. Clarke](#)

[Bruce D. Uhler](#)

[James M. Steinke](#)

[Dana Jones](#)

Assignee

[Mediflex Systems, Inc.](#)

Application

No. 11135 filed on
1993-01-29

Current US Class

606/242, 601/100, 601/06, 602/32

Field of Search

128/845, 601/100, 601/06,
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Examiners

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Description

BACKGROUND OF THE INVENTION

The present invention relates to an orthopedic treatment table and especially to such a table which can simultaneously move a patient's body through multiple compound motions.

In the past, it has been common to provide various types of passive exercise devices which place a patient on a table or other exercise device which in turn moves portions of the patient's body through predetermined motions. These devices use electric motors and mechanisms, such as cams, links, and belts, to move portions of the patient's body. For instance, a passive exercise device for the leg

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Today in History

September 16, 1968
An Wang obtained a patent for a calculating apparatus and basic component of computer technology.

Priority Publications
Assistant: David J. Kenney

Attorney, Agent or Firm

William M.
Hobby, III

patient's body. For instance, a passive exercise device for the legs might move each leg separately vertically in an up and down motion without the patient having to lift his own leg. Such devices are used in salons where a series of separate passive exercise devices place different portions of a body through different motions for exercising and toning the body. Similar devices have also been suggested by chiropractors and orthopedic surgeons as well as osteopaths for moving the body in certain predetermined motions. These devices are sometimes used with arthritic or other patients recuperating from accidents, strokes, or the like. Typical prior art U.S. patents can be seen in the patent to Annas, No. 3,620,210, for a sacroiliac rotator which has a table having a platform with motion provided on one end of the table in a generally horizontal back and forth reciprocation to move the lower part of the body relative to the upper part of the body with the movement of the body being at the pelvic or sacroiliac region. This table also provides for a vertical axis movement of the same table portion for moving on the sacroiliac region to bend the body along a common point and with a single motor using a crank mechanism. The Holme Pat. No. 1,400,546, shows an osteopathic treatment table for placing a patient in a variety of positions by the manual shifting of one end of the table in both horizontal and vertical directions and then locking the table in different positions. Similarly, the Davenport Pat. No. 1,011,038, shows a surgical operating table in which each end of the table can be rotated in a horizontal plane manually to position the patient. The Koenigkramer Pat. No. 1,453,013, shows a treatment table in which the table can be manually shifted in vertical and horizontal planes to position the patient. The Patton Pat. No. 1,830,071, is for a universal treatment table for use by osteopaths and chiropractors in different types of treatment and allows each end of the table to be shifted between vertical positions on pivots and allows one end of the table to be moved in a horizontal direction and also provides for shifting of the center table portion. The Murray Pat. No. 1,950,948, shows an osteo rotor providing for placing a patient under tension and also provides a circular motion to one end of the table. The Colston Pat. No. 2,494,746, shows a body manipulating table which allows for motorized vertical motion on one end of the table with the patient's legs strapped to the other end. The Lane et al. Pat. No. 3,998,218, shows a chiropractic table which enables a doctor to raise or lower individual cushions on the table while treating the patient on the table. The Lundblad Pat. No. 4,579,109, shows an apparatus for treating back ailments which allows tension to be placed on the patient while providing a motorized movement to one end of the table. The Albright Pat. No. 1,076,475, shows an early version of a revolving leaf treating table.

table.

In contrast to these prior art patents, the present invention is for an orthopedic treatment table which allows a compound motion of each end which are individually controllable by cycle time as to vertical and horizontal motion to provide a compound motion on one end of the body while providing a compound oscillatory motion to the other end to provide greater flexibility to the compound motions and infinite variations in the cycles, which compound motions are directed to pivot within selected regions of the spinal column.

SUMMARY OF THE INVENTION

An orthopedic treatment apparatus has a frame having a first movable **platform** having a **platform** frame movably attached to the frame for a reciprocating motion on a first pivot having an intersection located in a region of the spinal column in a generally vertical motion. The first movable **platform** is movably attached to the **platform** frame for a generally horizontal reciprocating motion on a second pivot having an intersection within a region of the spinal column. A first drive motor is attached to the frame and coupled to the first movable **platform** for driving the **platform** in the reciprocating motion relative to the frame while a second drive motor is attached to the first movable **platform** frame and coupled to the **platform** for moving the **platform** in a generally horizontal reciprocating motion relative to the frame. A second **platform** is movably attached to the frame and movable relative thereto and is driven by a third drive motor attached to the frame and operatively coupled to the second **platform** to move the **platform** relative to the frame in a generally oscillatory motion about a pivot projected to be within a second region of the spinal column so that the orthopedic treatment apparatus moves plural portions of a patient through a plurality of compound motions which are adjustable by cycle time for each motion.

BRIEF DESCRIPTION OF THE DRAWINGS

Other objects, features, and advantages of the present invention will be apparent from the written description and the drawings in which:

FIG. 1 is a perspective view of an orthopedic treatment apparatus in accordance with the present invention;

FIG. 2 is a perspective view of the orthopedic treatment apparatus taken from the other side of FIG. 1;

taken from the other side of FIG. 1,

FIG. 3 is a side elevation of the orthopedic treatment apparatus of FIGS. 1 and 2 having the cover removed and having phantom views illustrating movement;

FIG. 4 is a top plan view of an orthopedic treatment apparatus having the cover and portions removed and showing the horizontal movement in phantom; and

FIG. 5 is a partial perspective view of the orthopedic treatment apparatus with the cover removed.

DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring to the drawings and especially to FIGS. 1 and 2, an orthopedic treatment apparatus of table 10 is illustrated in perspective views having a cover 11 having a base cover portion 12, side cover portion 13, and top cover portion 14. The orthopedic table has a movable **platform** portion 15 which is for supporting a leg which has a cover 16 and a supporting pad 17 along with side supports 18 for holding the legs of a patient laying thereon in position during movement of the **platform** of table portion 15. A second **platform** or head supporting portion 20 has a support for supporting the head during motion of the **platform** 20. A fixed portion of the **platform** or patient supporting table 22 is also covered as is the fixed portion 23 having the side supports 24.

In operation, a patient is placed on the table 10 with his legs extending on the pads 17 between the side supports 18 and his head resting on the head support **platform** 20 in the head support 21. The operator can use the control 25 to program the movements of the **platform** portion 15 and the movement of the **platform** portion 20 through separate compound movement cycles at predetermined cycle movements in both vertical and horizontal directions which pivot in the plane of the spinal column and, at the same time, set the timer for a predetermined time of operation. Cable 26 is connected from the control 25 to control electric motors through relays. Three separate motors are utilized for different movement operations so that the cycles can be separately controlled in three different movement directions for the two **platforms** 15 and 20. Thus, a patient can have his leg portion moved relative to the hips which may be positioned on the portion 23 of the **platform** while the **platform** 15 moves up and down in a vertical direction and can simultaneously or alternately move left and right in a

horizontal direction. Each control for separate cycles of rotation or speeds and each control for the link of vertical up and down movement or horizontal left and right movement is entered by keypad into a local computer self-contained within the apparatus. The upward vertical movement is for lumbar flexion about a pivot located within the spinal column and the platform may be raised 35° from a horizontal while the down motion of the platform 15 provides a lumbar extension and may be 10° from horizontal for a total of 45° vertical movement of the platform 15. Each movement can be controlled for speeds from 1 to 15 cycles per minute and can be set to operate on a timed duration of anywhere between 1 and 60 minutes. Simultaneously with or alternate to the vertical motion of the platform 15, the head supporting portion can be rotated vertically about a pivot projected to the spinal column for cervical flexion of up to 15° vertically or for cervical extension by downward movement of 15° from horizontal. Each movement of the platform can have the speed varied from 1 to 15 cycles per minute and can be set for a time duration of between 1 and 60 minutes and separately controlled from the operation of the platforms. In addition, the horizontal right to left movement of the platform 15 can be used for lumbar lateral flexion and is controlled by a separate motor with a range from 15° to the left and right from a center null position and using a speed of between 1 and 15 cycles per minute for a timed duration of from 1 to 60 minutes. The motion and speed of each of the platforms is controlled as directed by the orthopedic doctor as needed.

Turning now to FIGS. 3, 4 and 5, the operation of each of the compound movements is illustrated in which the apparatus has a rigid frame 30 having a base frame 31 and a plurality of legs 32, two of the legs 33 having wheels 34 for ease of movement of the orthopedic treatment table. The platform 15 of FIGS. 1 and 2 is supported by a steel frame 35 having a rigid steel brace 36, both supported on a vertical steel platform frame member 37. The up and down motion is controlled by moving the vertical frame portion 37 and the rest of the frame with a rigid member 38 attached to a frame portion 40 which rotates on a pair of pivots 41 which lie in the plane of the spinal column to allow the frame 35 to move up and down in a vertical (rotation) direction. The link member 38 is rigidly attached to the frame portion 40 on one end but is moved by a link 41 movably attached with a pin 42 to the member 38 at the other end thereof. The rigid link 39 is attached at the other end thereof with a pin 43 to a shuttle member 44 which in turn is attached to a cog belt 45 which belt rides on a cylindrical idler gear 46 supported in a journal 47 to a frame member 48 which is attached to the frame 30. The cog belt is held at the other

with a gear attached to the shaft of a gear box 69 driven by the reversible motor 50. The gear box shaft is supported in journal 51 and a frame portion 49 forms a track for the shuttle member 44 as the cog belt 45 is driven back and forth by the electric motor 50. The frame 35 for the **platform** is also supported for horizontal movement by the shaft 52 as described hereinafter. While the shafts 41 are supported in bearings to the frame member 53, the rigid frame portion 54 allows the patient to be supported on a **platform** 26 attached to the frame 54.

The motion of the head **platform** 20 (FIG. 1) can be seen having the "second" **platform** portion 55 supported by short rigid links 56 to a pivot 57 held on a frame member 58 to the horizontal frame portion 59 which has a camming member 60 having a camming slot 61 for a cam follower 62 and a cam slot 63 with a cam follower 64 riding therein. The cam followers are both attached to the horizontal frame portion 59. The horizontal frame portion 59 is attached to a link 6B which is attached with a pin 66 to a moving shuttle member 67 driven by a cog belt 68 riding on a rotating cog gear 70 at one end and a cog gear 71 on the other end attached to a separate gear box 69 and reversible electric motor 72 which in turn is rigidly attached to the frame 30 which drives the cog belt 68 and in turn drives the member 73 and 67 to drive the link 6B to drive the member 69 to direct the **platform** 55 through a predetermined motion responsive to the operation of the motor 72 to move the shuttle member 67 back and forth, as can be more clearly seen in FIG. 5. Movement of the **platform** frame member 59 follows a predetermined path governed by the cam slots 60 and 63 in member 60 to force the cam followers 62 and 64 attached to member 59 in the set pattern effectively.

In FIGS. 4 and 5, the motor 75 has a gear box 76 for driving shaft portion 52 to move the **platform** frame 35 and the **platform** 15 (of FIG. 1) in a horizontal, left and right direction responsive to the cycle program for the motor 75. The frame portion 77 as well as the motor 75 are attached to the first movable **platform** frame 78 of the frame 35 to move with the frame so that the motor 75 and gear box 76, move with the frame 35 in a vertical direction while driving the frame in a horizontal movement, left and right, as shown in FIG. 4 in the phantom views. The speed of the motor 75 and the speed of the motor 50 are separately controlled so that the speed of the vertical movement, up and down, and the left and right are separately controlled for a compound movement based on different cycles to provide different benefits for different patients as prescribed by the physician. FIG. 4 also more clearly shows the linkage member 38 movably connected with the pin 42 to the linkage arm 41 and the arm 41 connected with

with the pin 42 to the linkage arm 41 and the arm 41 connected with the pin 43 to the shuttle 44 which rides on the cog belt 45. The motor 75 can be seen in this view as having the link member 80 movably pinned with the pin 81 at one end and 82 at the other end to support the horizontal or back and forth movement of the frame 35.

FIG. 5, on the other hand, shows a motor 75 connected to the gear box 76 and connected to the shaft 52 for controlling the horizontal movement of the frame 35. Similarly, the motor 50 controlling the gear box 49 is illustrated for driving the cog belt 45 to drive the shuttle 44 for moving the frame 35 in an up and down direction on the pair of pivots 41. This view also shows the operation of the motor 72 connected to the frame plate 83 for driving the shuttle member 67 riding on a shaft 84 to move the link members 65 to in turn drive the frame 59 to follow the pair of cam slots in the cam plates 60 with the cam followers 62 and 64 riding therein for controlling the head platform member 55 and head platform 20 (FIGS. 1 and 2).

It should be clear at this time that the operation of an orthopedic treatment table has been provided which provides orthopedic treatment to patients in accordance with an orthopedic physician's prescription which can be programmed for a series of compound movements of the patient, simultaneously or alternately moving the head in a predetermined fashion at one speed or cycle of movement and controlling the movement of the legs and lower torso in a vertical reciprocating motion and/or alternately in a horizontal reciprocating motion under different speeds to provide a different variety of compound motions each providing pivot locations within specific regions of the spinal column. This operation is provided by three separate motors driving three separate drive mechanisms to provide treatment tailored to a specific patient's orthopedic diagnosis. However, it should also be clear that the present invention is not to be considered limited to the forms shown which are to be considered illustrative rather than restrictive.

* * * * *

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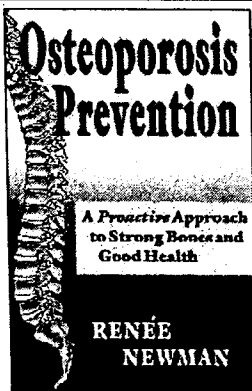
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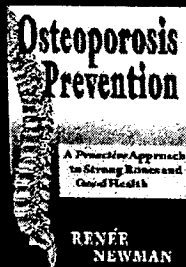
"The fact that the author has struggled with bone loss and can talk from personal experience makes the book more interesting and easy to read. Another good feature is that the book has informative illustrations and tables, which help clarify important points. I congratulate the author for writing a sound and thorough guide to osteoporosis prevention."

Ronald Lawrence, MD, PhD,

Co-chair of the first Symposium on Osteoporosis of the National Institute on Aging

"Very strongly recommended reading for anyone having to deal with the condition of osteoporosis in their family or family history and is seeking to avoid bone loss themselves, *Osteoporosis Prevention: A Provocative Approach To Strong Bones And Good Health* by consumer writer Renee Newman is a competent and

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Approach to Strong Bones And Good Health by consumer writer Renee Newman is a competent and thoroughly "reader friendly" approach to preventing osteoporosis. Inclusive of information on how to: help prevent osteoporosis and broken bones; get enough calcium and other bone nutrients from food; make exercise safe and fun; retain a youthful posture; select a bone density center; get maximum benefit from your bone density exam; understand bone density reports; avoid being duped by advertising; help seniors maintain their muscles and their bones; how medical professionals can motivate patients; and how to be a savvy patient. Osteoporosis Prevention should be a part of every community health center and public library Health & Medicine reference collection for non-specialist general readers."

Midwest Book Review

"A wonderful, wonderful book! Anybody concerned about osteoporosis should definitely read it."

Frankie Boyer, host of the nationally syndicated Frankie Boyer Show

"Plenty of women's health guides cover osteoporosis as part of their overall view on women's health and aging: **OSTEOPOROSIS PREVENTION: A PROACTIVE APPROACH TO STRONG BONES & GOOD HEALTH** goes beyond introductions to advocate an actual prevention program beginning with getting enough calcium and exercise to understanding differences between bone density testing centers, getting the most from such a report, and avoiding common problems."

Bookwatch

"I really liked the personalized examples in this book and the overall depth of information. I learned things I'd never known before. For example, I didn't realize how many different diseases and drugs could lead to osteoporosis. I finally learned what the term "AP spine" meant. I'd been using it for years without knowing its meaning. I also learned a great deal about bone density reports and testing.

"Osteoporosis Prevention has a very user-friendly layout and writing style, which makes it easy to read. I've given copies of it to my sister, a couple of friends, and I've mentioned it to some of my patients. It has a lot of beneficial advice on diet, exercise, supplements and posture. I highly recommend this book to anybody who wants a good overview of osteoporosis prevention."

Cathy Davis, orthopedic nurse

"I very much enjoyed reading *Osteoporosis Prevention*. I felt like I was on an educational adventure into the world of DXA tests and bone health. Rather than being very stiff and dryly educational, I found the reading to be captivating, with warmth and personal enthusiasm. Recently entering the world of menopause myself, I was delighted to find a book that encouraged me to be proactive about my own bone health, even if my medical insurance won't pay for a DXA test yet.

"On a professional level as an RN on an ortho-neuro floor, I get to see first hand the problems that osteoporosis can contribute to with spine and bone fractures. It definitely slows the healing process down and tarnishes the "golden" years. Proactive prevention is definitely the way to go and this book enthusiastically encourages that."

Mary R. Mercado, RN

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Contact: Dr. Simon von Stengel
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further
information



The Osteoporosis Research Group is currently engaged in two interdisciplinary interventional studies in the area of sports and health with focus on osteoporosis research. The main topic of the Senior Fitness and Prevention Study (SEFIP) – a randomized 18 month exercise study – is to evaluate the impact of physical exercise on medical condition, physical fitness, important risk factors and costs of the health care system. A group of 246 women over 65 are participating. The effect of rehabilitational sport exercises (2x/week) including aerobics (20 min; 65-80% HFmax), coordination exercises and body and leg strengthening (25 min/15 min) is compared to the effect of a wellness program including relaxation techniques and a light fitness program (1x/week, 60 min.). All participants are provided with calcium and vitamin D based on an initial analysis of the diet. In respect to osteoporosis risk factors bone density is measured by different methods (DXA, QCT, US) and at different body regions and the frequency of falls is taken into account by a questionnaire filled out by each participant. In addition to the osteoporosis risk factors also those

out by each participant. In addition to the osteoporosis risk factors also those of cardiovascular diseases like blood lipids, blood pressure, adipose, abdominal fat and girth are investigated. The recording of outpatient and inpatient treatment and costs will show how far the intervention affects the health care systems and if a support of special exercise programs by public authorities is reasonable.



In a second study, the Erlanger Longitudinal Vibrations Study (ELVIS), the impact of "whole body vibrations" applied by a vibration platform is analyzed. 50 women over 65 years old take part in a defined rehab training program in which the strengthening of the legs is done on vibration platforms (25-35 Hz). Topics are the osteoporosis risk factors examined by the bone density (DXA, QCT, US) and the frequency of falls and the parameters of neuromuscular capacity (strength, speed, balance). The results of this "vibration group" is compared to the data of the SEFIP study both to a group of 50 matched women of the rehab sport program and to a group of 50 matched women of the "wellness group". This study will make an important contribution to the discussion if special vibration exercises will improve the neuromuscular system and reduce the osteoporosis risk factors. Both studies, SEFIP and ELVIS, are designed according to the regulations of the International Committee of Medical Journal Editors (ICMJE) published on <https://register.clinicaltrials.gov>.

In the technical area research efforts focus on expanding dual x-ray absorptiometry (DXA) into a 3D method. Within an international collaboration an anatomical atlas of the femur is developed based on the advanced bone segmentation methods developed in Erlangen. The atlas will then be used to reconstruct a 3D dataset from a limited number of 2D projections measured by DXA. For this purpose the DXA scanner of the IMP is the first worldwide capable to handle this new 3D DXA mode. Independent of the progress in DXA

capable to handle this new 3D DXA mode. Independent of the progress in DXA the software for 3D QCT of the hip and the spine is used successfully in several clinical studies.

International Cooperations

Prof. H.K. Genant, Osteoporosis Research Group, Univ. of California at San Francisco, USA

Prof. J. D. Laredo, Hospital Lariboisière, Assistance Publique, Hôpitaux de Paris,

Prof. J. Adams, Imaging Science and Biomedical Engineering, University of Manchester

Prof. J. Mayhew, Truman State University, Missouri, USA

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SECTION: HEALTH SCIENCE; Pg. A1

LENGTH: 1382 words

HEADLINE: NEW BUZZ ON AN OLD WORKOUT FAD

BYLINE: BY ALICE DEMBNER, GLOBE STAFF

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SECTION: EXPANDED REPORTING; Pg. 248

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OSTEOPOROSIS; Device may help prevent bone loss in the frail *Medicine & Law Weekly* October 28, 2005 ([Copy w/ Cite](#))

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Weight-bearing exercise is one of the principal recommendations for preventing and treating the loss of bone density that can lead to osteoporosis. However, exercise isn't always possible, particularly for the frail.

An experimental device may help solve this problem, reports the October 2005 issue of the *Harvard Women's Health Watch*. Research strongly suggests that a few minutes of standing on an oscillating **platform**, about the size and shape of a bathroom scale, can do as much for bone density as longer bouts of more typical weight-bearing exercise.

Users stand on the **platform** while it produces small, barely perceptible **vibrations** that mimic what muscle cells do during common activities such as standing, maintaining balance, and walking. These tiny muscle contractions exert many small stresses on the bone, which can promote bone-building activity. Bones become stronger literally from the inside out.

The device is not yet available in the United States. A large clinical trial is being planned to gather the data required for U.S. Food and Drug Administration (FDA) approval, although the machine will be marketed in other countries by the end of this year.

Harvard Women's Health Watch cautions that even if the device becomes available in the United State, you shouldn't put away your walking shoes - exercise conveys many other health benefits besides keeping bones strong. But for women who can't participate in more vigorous physical activity, the device may prove quite useful.

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The Non-Drug Treatment for Osteoporosis


Frequently Asked Questions

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The following Frequently Asked Questions (FAQs) and answers can be helpful to better understand Osteoporosis, Dynamic Motion Therapy (DMT) and how the **Juvent 1000** works. Please click on any question below and you will be taken to the answer.

- Is the **Juvent 1000** Dynamic Motion Therapy (DMT) **Platform** easy to use?
- What does a treatment feel like on the **Juvent 1000**? Is it safe?
- Is the **Juvent 1000** noisy?
- How does DMT work?
- Are there clinical studies and research to support that the **Juvent 1000** not only stops osteoporosis but actually helps grow new bone?
- How does the cost of a **Juvent 1000** compare to ongoing drug therapy for osteoporosis?
- What kind of support does **Juvent** offer for its product?
- Who Needs a Bone Mineral Density Test?
- Who is at risk for osteoporosis?
- Does DMT have any side effects?
- How do I purchase a **Juvent 1000**?
- Where can I get a demonstration of the **Juvent 1000**?
- Can I use the **Juvent 1000** with osteoporosis drugs?
- What's the difference between Dynamic Motion Therapy (DMT) and whole body vibration (WBV)?

 [BACK TO QUESTIONS](#)

Q: How does the cost of a Juvent 1000 compare to ongoing drug therapy for osteoporosis?


A: The cost is less than chronic osteoporosis drug therapy. The durable **Juvent Platform** is designed to last a lifetime and can be used safely and effectively by all family members at risk of low bone density.

 [BACK TO QUESTIONS](#)

Q: What kind of support does Juvent offer for its product?

A: If you are not satisfied with your **Juvent 1000** medical device, you have 30 days to return it for a full money back guarantee. **Juvent** also offers a 24-month warranty (see warranty link for full details). If for some reason your medical device malfunctions, the **Juvent 1000** will be replaced for the length of the warranty.


If your medical device malfunctions, please e-mail: info@juvent.com to report your problem.

 [BACK TO QUESTIONS](#)

Q: Who Needs a Bone Mineral Density Test?

A: Anyone at any age, male or female with one or more of the risk factors for osteoporosis should have a dual energy x-ray absorptiometry (DXA) scan. A DXA scan is an x-ray which is analyzed to determine bone density. It is a simple and painless procedure using an extremely low dose of radiation. It is short (about 15 minutes), accurate and is carried out with the person lying fully clothed on a padded examination table. The most common areas to be scanned are the lumbar spine and hips.

The earlier osteoporosis is identified, the more that can be done to prevent it from progressing. For example, it is useful for women in their early to late 30s to have a baseline scan for comparison in their later years.

 [BACK TO QUESTIONS](#)

Q: Who is at risk for osteoporosis?

A: Osteoporosis risk factors include:

- In women, if you were over 16 years of age before your first menstrual period, missed periods for more than 6 months and were not pregnant, had an early menopause or had a hysterectomy (with oophorectomy)
- In men, low levels of the male hormone testosterone (hypogonadism)
- Low body weight, history of an eating disorder (ie, anorexia, bulimia)
- Psychological stress
- Long term use of corticosteroid tablets (such as asthma medication)
- Maternal history of hip fracture
- Malabsorption, inflammatory bowel disease (Coeliac disease, Crohn's disease, ulcerative colitis) and gastric surgery
- Lack of exercise, long-term immobility or excessive exercise
- Heavy drinking
- Smoking

Your physician can assess your history against the risk factors above and determine whether you should have a DXA scan to measure your bone density.

⌂ BACK TO QUESTIONS

Q: Does DMT have any side effects?

A: No side effects have been reported with the **Juvent 1000**. People using the **Juvent 1000** experience positive effects during and after treatment. You should, however, always consult your doctor before undertaking any medical treatment. Contact your local **Juvent** representative and we'll send your doctor information on the **Juvent 1000** so he/she can help you make the best decision.

Use of the **Juvent 1000** is contraindicated for people with conditions in which an increase in fluid to the heart may be detrimental, which includes people with congestive heart failure.

⌂ BACK TO QUESTIONS

Q: How do I purchase a Juvent 1000?

A: To purchase the **Juvent 1000 DMT Platform**, please e-mail: medivibes@aircom.net or visit us on our website at www.juvent.com.

⌂ BACK TO QUESTIONS

Q: Where can I get a demonstration of the Juvent 1000?

A: **Juvent** is holding osteoporosis awareness sessions and product demonstrations around the country. E-mail: info@juvent.com us to find out when we'll be in your area!

⌂ BACK TO QUESTIONS

Q: Can I use the Juvent 1000 with osteoporosis drugs?

A: There is no current published information on the interaction between the **Juvent 1000** and osteoporosis drugs. Clinical studies are being planned which will compare the effect of DMT with various osteoporosis drugs. We recommend that you discuss this with your physician.

⌂ BACK TO QUESTIONS

Q: What's the difference between Dynamic Motion Therapy (DMT) and whole body vibration (WBV)?

A: **Juvent's** research and Dynamic Motion Therapy technology does not have any relationship to the technology or claims made by whole body shaker/vibration machines currently being sold for exercise and physical training. While the **Juvent 1000** delivers a very pure, low-level vertical movement to the skeleton, these other devices deliver a very forceful, sometimes violent shaking motion in all directions!

The acceleration magnitudes used in these devices, approximately 8.0g to as high as 22.0g, are well beyond the limits recommended for human tolerance by ISO 2631 and OSHA standards, and should be considered dangerous to use, especially for the elderly. These machines deliver 10 to 25 times greater amplitude than the **Juvent 1000**. There is limited evidence that these devices do anything for bone. In fact, many of the scientific studies and basic science data that are listed on their websites are actually studies performed by **Juvent** and research into its device.

⌂ BACK TO QUESTIONS

Q: Is the Juvent 1000 all I need to prevent or stop Osteoporosis?

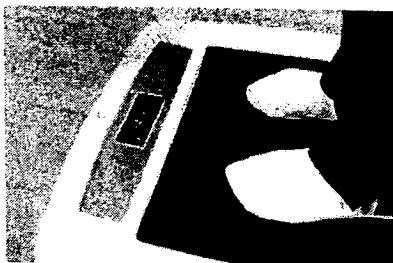
a few human hairs) that repeat at a rate of approximately 34 times per second. This repetition rate is automatically varied to correspond to an individual's body mass. Consequently, the vertical motion transmitted to the musculoskeletal system by the Juvent Platform is barely noticeable. Because the vertical motion is so gentle, the therapy feels relaxing and users find it easy to read or watch television while standing on the medical device. The user simply stands on the Juvent 1000 Platform for 20 minutes each day to obtain the full benefits of the Juvent therapy.



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The Juvent 1000 is the only DMT medical device on the market.

Juvent's patented DMT technology is substantially different from whole body vibration (WBV) devices that involve violent



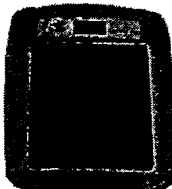
shaking and are marketed as a form of muscle strength training. There is no evidence that WBV has any positive impact on osteoporosis. The magnitude of Dynamic Motion Therapy is well within the limits set by the International Standards Organization (ISO 2631) and has been identified as a "non-significant risk" by the United States' Food and Drug Administration.

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About The Juvent 1000

- » Juvent 1000 Platform
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- » Company Information
- » How to Purchase the Juvent 1000



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There have been no reports of adverse effects with the use of the Juvent 1000 DMT Platform to date. This includes thousands of treatments in children, adolescents, and adult women and men.

Juvent Medical, Inc. feels a responsibility to provide as much information as possible to potential users. The following listing of precautions was developed from expertise with the technology and potential physiological effects.

The use of the Juvent 1000 DMT Platform has not been evaluated on the following conditions. Individuals with the following conditions or implants should consult their physician before using the medical device:

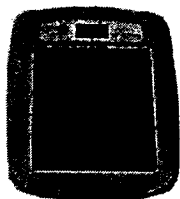
- pregnancy
- congestive heart failure
- past history of deep vein thrombosis and/or pulmonary embolism
- history of thrombophlebitis within 5 years
- sensitivity to motion sickness
- known retinal conditions (eye)
- joint implants
- pacemakers and implantable cardioverter defibrillators (ICDs)
- treatment/surgery for spinal conditions

Note: Some people who are used to very little physical exercise or activity may initially feel tired after the recommended 20-minute treatment. If this occurs after your first treatment, you may wish to start with a shorter treatment time (for example, two minutes or five minutes) and/or rest a day in-between treatments. You can gradually increase the time you use the device over several weeks, until you can comfortably use it for the 20-minute treatment time.

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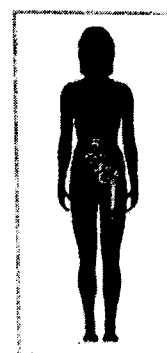
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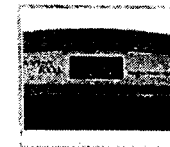
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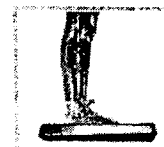
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**STAFFORD TRADING, INC., and JOHN S. STAFFORD, JR., Plaintiffs, v.
FREDERICK J. LOVELY and CHARLES POKOSKI, Defendants.**

No.: 05-C-4868

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2007 U.S. Dist. LEXIS 13062

February 22, 2007, Decided

SUBSEQUENT HISTORY: Objection denied by *Stafford Trading, Inc. v. Lovely*, 2007 U.S. Dist. LEXIS 31079 (N.D. Ill., Apr. 26, 2007)

LexisNexis(R) Headnotes

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs filed suit against defendants seeking a declaration that defendants did not have any rights in an options trading platform. Currently before the court was defendants' motion to compel the production of privileged documents.

OVERVIEW: During discovery, plaintiffs refused to produce a number of documents, claiming that they fell within the ambit of the attorney-client privilege. Defendants contended that plaintiffs' poorly presented privilege log failed to carry plaintiffs' burden of proving that the documents were entitled to such protection and that they should be produced. With respect to the communications including plaintiffs' investment banker, the court found that the privilege was limited to those instances where plaintiffs demonstrated that the investment banker confidentially communicated with plaintiffs' in-house counsel for the purpose of obtaining or providing legal advice. The court found that Document 1, a memorandum from one of plaintiffs' attorney to two other plaintiffs' attorneys reflecting legal advice on the structure of the TD transaction, was privileged. The court reasoned that the document reflected legal advice compiled by one of plaintiffs' attorney for the benefit of the others, and for the purpose of providing legal advice. The court also found that several emails were not protected and must be produced.

OUTCOME: Defendants' motion was granted in part, as to several documents, and denied in part, as to several documents.

*Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Elements
Evidence > Privileges > Attorney-Client Privilege > Scope*

[HN1] The attorney-client privilege protects confidential communications between a client and his attorney for the purpose of obtaining legal advice. The United States Court of Appeals for the Seventh Circuit has stated that the attorney-client privilege applies only where the party seeking to assert the privilege establishes the following: (1) that legal advice of any kind was sought (2) from a lawyer in his capacity as such, (3) the communications related to that purpose, (4) they were made in confidence (5) by the client and/or his agent, (6) were at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless waived.

*Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope
Evidence > Privileges > Attorney-Client Privilege > Waiver*

[HN2] The attorney-client privilege is a common law privilege that can be explicitly or implicitly waived by the client and is subject to a number of restrictions and exceptions. The privilege may be waived if the party knowingly discloses confidential information to a third party. The party asserting the privilege bears the burden

of showing that the privilege applies and that it has not been waived.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN3] The attorney-client privilege applies only where legal, not business, advice is sought. While it is true that solely personal or business advice is not protected by the attorney-client privilege, legal advice relating to business matters clearly is.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN4] The case law is clear that the attorney-client privilege is not vitiated simply because the attorney has weighed business considerations in rendering legal advice. Courts have utilized the following test to distinguish legal from nonlegal advice: A matter committed to a professional legal adviser is prima facie so committed for the sake of legal advice and is therefore within the privilege unless it appears to be lacking in aspects requiring legal advice. Nevertheless, merely sending a communication to an attorney does not cloak a business document with the protections afforded by the attorney-client privilege. The privilege protects only those papers prepared for the purpose of confidential communication to the attorney or by the attorney. The attorney client privilege excludes from its scope even confidential communications with a lawyer about business or other non-legal matters.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN5] In the context of the attorney-client privilege, to determine whether a financial advisor assisting the client was a de facto employee, the Export-Import court considered: 1) whether there was a continuous and close working relationship between the advisor and the company on a critical matter; and 2) whether the advisor alone possessed critical information.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN6] Many courts have recognized that, in today's market place, attorneys need to be able to have confidential communications with investment bankers to render adequate legal advice.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > General Overview***

[HN7] Whether or not the attorney-client privilege applies cannot be determined generally. Instead, claims of privilege must be made on a document by document basis.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN8] Memos to files prepared by non-legal personnel containing business information are clearly not privileged. These memos are not communications directed to anyone for the purpose of obtaining legal advice and cannot therefore fall within the ambit of the attorney-client privilege. The same reasoning applies with equal force to memos to file prepared by counsel because, once again, the intent to confidentially communicate with the client is missing.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN9] Although communications between in-house counsel are not communications directly to or from the client, it appears implicit in present day litigation with multiple attorneys required for proper representation that attorneys must be allowed to confer with each other regarding the representation of a client on a privileged basis in the same way that clients must be able to discuss the advice of counsel amongst themselves on a privileged basis.

***Civil Procedure > Discovery > Privileged Matters > Attorney-Client Privilege
Evidence > Privileges > Attorney-Client Privilege > Scope***

[HN10] Attorney notes reflecting client confidences and legal advice regarding certain transactions are privileged.

COUNSEL: [*1] For Stafford Trading Inc, John S Stafford, Jr, Plaintiffs: Gary M. Miller, LEAD

ATTORNEY, Claudia Mercedes Laurens, John R. McCambridge, Grippo & Elden, Chicago, IL; Jacob Warren Harrell, DLA Piper US LLP, Chicago, IL; Sarah D McTuman, Grippo & Elden LLC, Chicago, IL.

For Frederick J Lovely, Charles Pokoski, Defendants: Edwin L. Durham, Michael Rachlis, LEAD ATTORNEYS, Rachlis, Durham, Duff & Adler, Chicago, IL; Kay Levi Pick, Krasnow, Saunders, Cornblath, LLP, Chicago, IL; Kevin Buckley Duff, Marion B. Adler, Rachlis Durham Duff & Adler, Chicago, IL; Michael R. Fox, Randall B. Gold, Fox & Fox, S.C., Monona, WI.

For Frederick J Lovely, Charles Pokoski, Counter Claimants: Kay Levi Pick, Krasnow, Saunders, Cornblath, LLP, Chicago, IL.

JUDGES: Arlander Keys, United States Magistrate Judge. Judge David H. Coar.

OPINION BY: Arlander Keys

OPINION

MEMORANDUM OPINION AND ORDER

Currently before the Court is Defendants' Motion to Compel the Production of Privileged Documents. Plaintiffs sued Defendants seeking a declaration that Defendants do not have any rights in an options trading platform known as RIVAS. During discovery, Plaintiffs refused to produce a number of documents, claiming [*2] that they fall within the ambit of the attorney-client privilege. Defendants contend that Plaintiffs' poorly presented privilege log fails to carry Plaintiffs' burden of proving that the documents are entitled to such protection and that they should be produced. For the reasons set forth below, Defendants' Motion is granted in part, and denied in part.

Background Facts

In approximately 2000, Stafford Trading, Inc. and John S. Stafford Jr., as well as other Stafford-owned entities (collectively "Stafford"), retained investment banker Goldman Sachs ("GS") to locate potential purchasers for Stafford, and to assist in facilitating the transaction. In mid-2001, the Toronto Dominion Bank ("TD") expressed an interest in acquiring the Stafford businesses. Upon GS's recommendation, Stafford retained the law firm of Kirkland & Ellis ("Kirkland") to represent Stafford in the potential transaction with TD, and also retained the law firm of Sullivan & Cromwell to advise it on certain aspects of the TD transaction.

GS performed due diligence on the Stafford businesses and gained important, detailed knowledge about Stafford's corporate structures and operations. GS was heavily involved [*3] in the negotiations between Stafford and TD, and frequently communicated with Kirkland regarding the transaction.

The transaction was completed in February of 2002, at which time some of the Stafford businesses were merged into TD Options, LLC ("TDO"). In addition to other consideration, Stafford transferred to TD all of its rights in its technology, including an options trading platform called RIVAS. Defendants, who had either worked with or for John Stafford ¹, became members of TDO, and received a sum of money as an incentive to remain with TDO following the merger.

1 It is Plaintiffs' position that Defendants developed RIVAS while employed by Stafford; conversely, Defendants contend that they were Mr. Stafford's partners and that they have ownership rights with regard to RIVAS.

Approximately three years after the completion of the transaction, Defendants formally claimed that they had created and jointly-owned RIVAS with Mr. Stafford, and that Mr. Stafford owed them one half of the proceeds from the TD [*4] transaction that related to RIVAS. Stafford filed this declaratory judgment action to resolve the issue of ownership.

The present dispute arose during discovery. Defendants argue that Plaintiffs are wrongfully withholding, on the basis of the attorney-client privilege, documents ² that clearly fall beyond the scope of the privilege, such as: 1) documents containing business, as opposed to legal advice; 2) documents that were shared with Goldman Sachs, thereby waiving the privilege; and 3) documents that were shared with third-party TD, also waiving the privilege. At oral argument before this Court on January 10, 2007, it became apparent that Plaintiffs had produced the third category of documents - documents that had been shared with TD - but had merely redacted attorney notes written on the documents.

2 In some instances, Plaintiffs have not withheld the entire document, but have produced only redacted copies of the documents.

The parties' dispute is not limited to substantive privilege law. Defendants' counsel [*5] argues that Plaintiffs' confusing, incomplete, inconsistent, and sometimes inaccurate privilege log warrants a waiver of whatever privilege might have existed ³. Plaintiffs counter that Defendants sidestepped their obligations under Rule 37.2, noting that the parties' and the court's time might have been spared, at least with regard to some of the

documents at issue, if Defendants had properly conducted a meet and confer before filing the present Motion.

3 The Court shares Defendants' frustration. In support of their claims of privilege, Plaintiffs have submitted affidavits describing the documents sought to be withheld. The affidavits identify the documents only by the Bates Stamp number, and do not make any attempt to identify the Privilege Log Number corresponding with that document. The unnecessarily time-consuming and confusing task of aligning the various Bates Stamp numbers referenced in the affidavits with the corresponding documents in the Privilege Log was further complicated by the fact that the affidavits sometimes referenced Bates Stamp numbers that did not correspond to any of the documents in the Privilege Log (*See, e.g.*, Affidavit of Robert M Hayward at P 13, referencing P-STA 000064 through P-STA 000068, which is not identified on the Privilege Log Summary) and because the affidavits sometime referenced a range of Bates Numbers that was slightly inconsistent with the Privilege Log (*See* Affidavit of Robert M. Hayward at P 20 referencing Bates Numbers P-STA 000756-000758, which the Privilege Log references as P-STA Numbers 000757-000758). Plaintiffs' counsel has taken a risk in asking the Court to do their job for them, particularly where some of the affidavits contain almost 40 paragraphs discussing at least as many documents, and the documents sought to be withheld contain hundreds of pieces of paper.

[*6] Plaintiffs have submitted to the Court a privilege log, with addendums, affidavits, and their purportedly privileged documents for an *in camera* review.

Discussion

[HN1] The attorney-client privilege protects confidential communications between a client and his attorney for the purpose of obtaining legal advice. *Denius v. Dunlap*, 209 F.3d 944, 952 (7th Cir. 2000). The Seventh Circuit has stated that the attorney-client privilege applies only where the party seeking to assert the privilege establishes the following: (1) that legal advice of any kind was sought (2) from a lawyer in his capacity as such, (3) the communications related to that purpose, (4) they were made in confidence (5) by the client and/or his agent, (6) were at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless waived. *United States v. White*, 950 F.2d 426, 430 (7th Cir. 1991) (noting that communications are privi-

leged only if the statements do, in fact, reveal the substance of a confidential communication.)

[HN2] "The doctrine is a common law privilege that can be explicitly or implicitly waived by the client and is subject [*7] to a number of restrictions and exceptions." *Id.* The privilege may be waived if the party knowingly discloses confidential information to a third party. *Beneficial Franchise Co., Inc. v. Bank One, N.A.*, 205 F.R.D. 212, 216 (N.D. Ill. 2001). The party asserting the privilege bears the burden of showing that the privilege applies and that it has not been waived. *U.S. v. Evans*, 113 F.3d 1457, 1461 (7th Cir. 1997).

A. The Privilege Covers Communications Regarding Legal Advice.

[HN3] The attorney-client privilege applies only where legal, not business, advice is sought. *In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983*, 731 F.2d 1032, 1037 (2d Cir. 1984). "While it is true that solely personal or business advice is not protected by the attorney-client privilege, legal advice relating to business matters clearly is." *Marusiak v. Adjustable Clamp Co.*, 2003 U.S. Dist. LEXIS 9450, 2003 WL 21321311, at *2 (N.D. Ill. June 5, 2003). Recognizing the difficulty in negotiating the fine line between legal, as opposed to business advice, the court in *Weeks v. Samsung Heavy Industries, Ltd.*, 1996 U.S. Dist. LEXIS 7397, 1996 WL 288511 at *2 (N.D. Ill. [*8] May 30, 1996) explained that:

[HN4] The case law is clear that the attorney-client privilege is not vitiated simply because the attorney has weighed business considerations in rendering legal advice. Courts have utilized the following test to distinguish legal from nonlegal advice: [A] matter committed to a professional legal adviser is prima facie so committed for the sake of legal advice . . . and is therefore within the privilege unless it appears to be lacking in aspects requiring legal advice.

Nevertheless, merely sending a communication to an attorney does not cloak a business document with the protections afforded by the attorney-client privilege. *Urban Box Office Network, Inc. v. Interfase Managers, L.P.*, 2006 U.S. Dist. LEXIS 20648, 2006 WL 1004472, at *5 (S.D.N.Y. April 18, 2006). The privilege "protects only those papers prepared . . . for the purpose of confidential communication to the attorney or by the attorney." *Id.* "The attorney client privilege excludes from its scope even confidential communications with a lawyer

about business or other non-legal matters." *Muro v. Target Corp.*, 2006 U.S. Dist. LEXIS 86030, 2006 WL 3422181, at *3 (N.D. Ill. Nov. 28, 2006) citing *Burden-Meeks v. Welch*, 319 F.3d 897, 899 (7th Cir. 2003) [*9] (stating that "[f]ederal law extends the privilege to communications about legal subjects, and its hard to see why a business evaluation meets that description.")

B. Communications Including Goldman Sachs

Defendants argue that Plaintiffs have wrongfully withheld over 30 documents, and redacted others, on the basis of the attorney-client privilege, even though Plaintiffs' investment banker, GS, was privy to those documents. Defendants contend that communications between clients and attorneys are not privileged when financial advisors are included in the communications, and the advisor's role is to provide business, as opposed to legal, advice, citing *In re Consol. Litigation Concerning Internt'l Harvester*, 666 F. Supp. 1148, 1157 (N.D. Ill. 1987) ("the attorney-client communication disclosed to Lehman Brothers lost any privileged character they might have had"); *John Doe Corp v. U.S.*, 675 F.2d 482, 488 (2d Cir. 1982) (privilege was waived when inclusion of accountant in communications between client and legal counsel "was sparked by Accountant's responsibilities in conducting the audit, not by Doe Corp.'s seeking of legal advice requiring [*10] the aid of an accountant"); *Urban Box Office Network, Inc. v. Interfase Mgrs., L.P.*, 2006 U.S. Dist. LEXIS 20648, 2006 WL 1004472, at *4 (S.D.N.Y. 2006) ("simply because financial consultants are employed to assist a company in a restructuring transaction does not mean that their communications with the company's attorneys are privileged. What is relevant is whether their communications with the attorneys were made in confidence for the purpose of the client obtaining legal advice from its counsel"); *Export-Import Bank v. Asia Pulp & Paper Co.*, 232 F.R.D. 103, 113 (S.D.N.Y. 2005) (where advisor was "major participant in APP's financial affairs, not a mere interpreter" between the client and its counsel, attorney-client communications that included investment advisor were not privileged.)

Plaintiffs claim that "the rule Defendants' rely upon pertains to the disclosure of information to true third parties with no special relationship to the client. It does not apply to a situation like this one, where the investment advisor was privy to confidential attorney-client communications, because its input was necessary for the attorney to advise his client, where the advice provided was [*11] primarily legal in nature, and where Stafford relied upon GS to provide expert financial advice in connection with the transaction." Pls' Opp. Brf. at 7. Plaintiffs cite to a litany of relevant caselaw in support of their position, citing *In re Copper Market Antitrust Litig.*, 200

F.R.D. 213, 217 (S.D.N.Y. 2001) ("confidential communications made for the purpose of obtaining legal advice between a client's representatives and the client's attorney, between representatives of a client, or between attorneys for a client should be protected from disclosure under the attorney-client privilege"); *Caremark, Inc. v. Affiliated Computer Servs, Inc.*, 192 F.R.D. 263, 267 (N.D. Ill. 2000) (applying the more restrictive Illinois control group test and holding that communications between outside counsel and a consultant, who was effectively part of client's control group, were privileged); *Calvin Klein Trademark Trust v. Wachner*, 124 F. Supp. 2d 207 (S.D. N.Y. 2000) (joint discussions among client, its attorney, and its investment banker were privileged where investment banker's role involved providing advice useful to the attorney in rendering a [*12] legal opinion); *Allianz Underwriters, Inc. v. Rusty Jones, Inc.*, No. 84 C 10860, 1986 U.S. Dist. LEXIS 24386, 1986 WL 6950 (N.D. Ill. Jun. 12, 1986) (communications between attorney, client, and insurance broker were privileged where it was sent to the broker with the understanding that the broker would communicate necessary facts to the attorney). See also, *Muro v. Target Corp.*, No. 04 C 6267, 2006 U.S. Dist. LEXIS 86030, 2006 WL 3422181, at *4 (N.D. Ill. Nov. 28, 2006) (lack of participation in a communication by attorney does not necessarily obviate privilege; communication is privileged if it reveals "directly or indirectly, the substance of a confidential attorney-client communication.").

As the parties' citations reveal, courts have reached varied results in assessing whether and when communications with a third-party consultant assisting the client results in waiver of the attorney-client privilege. In *In re Bieter Co.*, 16 F.3d 929 (8th Cir. 1994), the court determined that an independent consultant's relationship to the client was of the sort that justified applying the attorney-client privilege. The court based its decision on the fact that the consultant often acted as the client's [*13] sole representative on a project that appeared to be the "*sine qua non*" of the client's existence. *Id.* at 934. In light of the consultant's extensive involvement with counsel and his central role in the transaction, the court found no basis for distinguishing him from an employee. *Id.* At 938.

The court in *Copper Market* relied upon *Bieter* to extend the privilege to a public relations firm hired by a foreign corporation to handle all issues relating to publicity and public comments regarding a high profile litigation in the United States. 200 F.R.D. at 218. The *Copper Market* court took a pragmatic approach, and found that the privilege applied because 1) the public relations ("pr") firm was "essentially incorporated into [the client's] staff to perform a corporate function that was necessary"; 2) the firm had the authority to make decisions on the client's behalf; 3) the firm consulted with the cli-

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nt's counsel in formulating its strategy; and 4) the communications were for the purpose of obtaining legal advice. *Id.* at 219. The court saw its conclusion as being a natural extension of the Supreme Court's [*14] holding in *Upjohn Co. v. United States*, 449 U.S. 383, 101 S. Ct. 577, 66 L. Ed. 2d 584 (1981), where the Supreme Court "based its holding that the communications at issue were privileged on determinations that the communications had been made to Upjohn's counsel by its employees acting at the direction of their corporate superiors" for the purpose of obtaining legal advice, with the understanding that the communications were confidential. *Copper Market*, 200 F.R.D. at 218 ("The Supreme Court's functional approach in *Upjohn* looked to whether the communications at issue were by the Upjohn agents who possessed relevant information that would enable Upjohn's attorney to render sound legal advice.")

Similarly, in *FTC v. Glaxosmithkline*, 352 U.S. App. D.C. 343, 294 F.3d 141 (D.C. Cir. 2002), the D.C. Circuit found that the attorney-client privilege applied to independent contractors assisting a prescription drug manufacturer. In *Glaxosmithkline*, the FTC issued a subpoena for documents relating to a prescription drug manufacturer's filing regarding its parents with the Food and Drug Administration. *Id.* at 143. The manufacturer withheld as privileged documents that were distributed [*15] to independent contractors. In analyzing whether the documents were privileged, the DC Circuit noted that public relations and government affairs consultants hired by the client worked with the client's attorneys in the same manner as the full time employees and "became integral members of the team assigned to deal" with the litigation. *Id.* at 148. "In these circumstances, 'there is no reason to distinguish between a person on the corporation's payroll and a consultant hired by the corporation if each acts for the corporation and possesses the information needed by attorneys in rendering legal advice.'" *Id.* (quoting *Copper Market*, 200 F.R.D. at 219.)

In contrast, some courts have extended the privilege to third parties only where they have acted as interpreters between an attorney and his or her client. *U.S. v. Ackert*, 169 F.3d 136, 138 (2d Cir. 1999). The Second Circuit found that, pursuant to the decision in *United States v. Kovel*, 296 F.2d 918 (1961), the presence of a third party does not destroy the attorney client privilege only when the third party serves as an interpreter, facilitating communication between [*16] attorney and client. *Id.* The *Akert* court concluded that communications with third parties that merely serve to inform the attorney or enable him to provide better legal advice, however, are not privileged. *Id.* (finding that communications between the lawyer and his client's investment banker were not privileged simply because the information assisted the attorney in providing legal advice.)

Other courts recognized the "functional equivalent doctrine" outlined in *Beiter*, but were unwilling to expand upon *Beiter* without convincing evidence that the consultant was, in fact, a *de facto* employee. In *Export-Import Bank of the United States*, 232 F.R.D. at 113, the court noted that the defendant invoked two doctrines to protect attorney-client communications shared with third-parties. The court, agreed that communications with professionals, such as financial advisors, are covered by the attorney-client privilege if the advisor acts primarily as an "interpreter," by explaining financial concepts to the client's attorney. *Id.* at 113, citing *Kovel*, 296 F.2d at 922. Next, the court cited to *Beiter*, 16 F.3d at 933-34, [*17] in finding that the privilege should also apply where the financial advisor is "so thoroughly integrated into [the client's] corporate structure that he should be treated as though he were a corporate employee for privilege purposes." *Id.* (finding that the presence of such *de facto* employees did not waive the privilege.)

[HN5] To determine whether the financial advisor assisting the client was a *de facto* employee, the *Export-Import* court considered: 1) whether there was a continuous and close working relationship between the advisor and the company on a critical matter; and 2) whether the advisor alone possessed critical information. *Id.* at 113-14. The *Export-Import* court noted that the client's advisor did not work in the client's offices, and that the advisor, even at the project's peak, devoted only 85% of his time to the client's business. The court decided that the consultant's "efforts are precisely those that any financial consultant would likely make under the circumstances," and, therefore, communications with the consultant were not entitled to attorney-client privilege protection. *Id.* at 114. See also *In re Currency Conversion Fee*, 2003 U.S. Dist. LEXIS 18636, 2003 WL 22389169 [*18] at *2 (S.D.N.Y. 2003) (finding that the privilege did not extend to the consultant, who "was merely a transaction processing and computer services corporation that provided standard trade service to [the client] and a vast number of other credit card companies.") In rejecting a more expansive interpretation of the attorney-client privilege, the *Export-Import* court explained that:

if the functional equivalent doctrine were extended to every situation where a financial consultant worked exhaustively to guide a company through a restructuring deal, the exception would swallow the basic rule, set forth in *United States v. Arthur Young & Co.*, 465 U.S. 805, 817, 104 S. Ct. 1495, 79 L. Ed. 2d 826 (1984), that there is no privilege protecting communications between clients and their accountants.

Id. at 114.

After reviewing the caselaw, the Court concludes that the rule in *Export-Import* is too restrictive. Notably, the *Export-Import* court's concern about the exception swallowing the basic rule in *Arthur Young* is unwarranted. In declining to embrace an accountant-client privilege in *Arthur Young*, the Supreme Court relied upon the fact that an independent public accountant [*19] serves a public role and "assumes a public responsibility transcending any employment relationship with the client. . . . This public watchdog function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust." 465 U.S. at 817-18. The obvious distinction between *Arthur Young* and the instant case is the existence of confidentiality. The Supreme Court makes clear in *Arthur Young* that clients are not entitled to rely upon a bond of confidentiality with an independent accountant, because these accountants act on behalf of the public. Under these circumstances, the accountants could not be considered agents of their clients.

Conversely, in the instant case, GS was clearly acting on behalf of Stafford, not the public at large. Although GS serves a multitude of clients, it is clear in this case that all of the players from GS, Stafford, and Kirkland considered their communications to be confidential, and that the communications were treated as such. [HN6] Many courts have recognized that, in today's market place, attorneys need to be able to have confidential communications with investment bankers [*20] to render adequate legal advice. See *Calvin Klein Trademark Trust v. Wachner*, 124 F. Supp.2d 207, 209 (S.D.N.Y. 2000).

The court in *Urban Box Office Network, Inc. v. Interfase Managers, L.P.*, 2006 U.S. Dist. LEXIS 20648, 2006 WL 1004472 (S.D.N.Y. April 17, 2006) balanced the *Export-Import* court's concerns about improperly expanding the parameters of the privilege with the *Copper Market* court's advocacy of a broader, more functional test. The *Urban Box* court recognized that the privilege should be limited to instances where a third party, such as an investment banker or financial advisor, assists a lawyer in giving legal advice. 2006 U.S. Dist. LEXIS 20648, [WL] at *4. But also acknowledged that there were instances where the third party's participation was required to enable the attorney to render legal advice. *Id.* (citing *Calvin Klein*, 124 F. Supp.2d at 209 (finding that communications with investment banker were privileged because the third party was "involved in rendering expert advice as to what a reasonable business person would consider 'material' in this context. 'Materiality' in this regard is a mixed question of fact and law,

which a responsible law firm in [*21] Wachtell's place would not be able to adequately resolve without the benefit of an investment banker's expert assessment of which facts were 'material' from a business person's perspective."))

The Court adopts this balanced approach in the instant case, limiting the privilege to those instances where Plaintiffs have demonstrated that GS confidentially communicated with Kirkland or Stafford's in-house counsel for the purpose of obtaining or providing legal advice. Therefore, [HN7] whether or not the attorney-client privilege applies cannot be determined generally. Instead, Plaintiffs' claims of privilege must be made on a document by document basis. *Makula v. Sanwa Bus. Credit Corp.*, No. 96 C 7138, 1997 U.S. Dist. LEXIS 11741, 1997 WL 460935, at *2 (N.D. Ill. Aug. 8, 1997). With these principles in mind, the Court turns to the documents at hand.

Document 1: A memorandum from one Kirkland attorney to two other Kirkland attorneys reflecting legal advice on the structure of the TD transaction, which includes extensive handwritten attorney notes. There is no evidence of a communication with Kirkland's client. There are two competing lines of cases on whether such documents are entitled to protection [*22] under the attorney-client privilege. [HN8] "Memos to files prepared by non-legal personnel containing business information are clearly not privileged. These memos are not communications directed to anyone for the purpose of obtaining legal advice and cannot therefore fall within the ambit of the privilege. [*Sneider v. Kimberly-Clark Corp.*, 91 F.R.D. 1, 6 (D.C. Ill. 1980)]. The same reasoning applies with equal force to memos to file prepared by counsel because, once again, the intent to confidentially communicate with the client is missing. *Id.*" *Heidelberg Harris, Inc. v. Mitsubishi Heavy Industries, Ltd.*, 1996 U.S. Dist. LEXIS 19274, 1996 WL 732522, at *5 (N.D. Ill. Dec 9, 1996) (noting that the failure to argue that the work product doctrine protects the documents waives application of the privilege.) Judge Denlow, however, recognized that [HN9] "although communications between in-house counsel are not communications directly to or from the client, it appears implicit in present day litigation with multiple attorneys required for proper representation that attorneys must be allowed to confer with each other regarding the representation of a client on a privileged basis in the same way [*23] that clients must be able to discuss the advice of counsel amongst themselves on a privileged basis." *McCook Metals L.L.C. v. Alcoa Inc.*, 192 F.R.D. 242, 255 (N.D. Ill. 2000). The Court agrees with Judge Denlow, and finds that the document here reflects legal advice compiled by one Kirkland attorney for the benefit of the others, and for

the purpose of providing legal advice. Therefore, the Court finds that the document is PRIVILEGED.

Document 2: This is a series of memoranda prepared by an unidentified Kirkland attorney reflecting legal advice on the structure of the TD transaction, which includes handwritten attorney notes. In her affidavit, former Kirkland attorney Rashimi Chanda, claims ownership of the memoranda and handwritten notes. She explains that the first memorandum (Bates Number P-STA1628-34) memorializes confidential communications with Stafford, and thus is protected by the attorney-client privilege. *Zenith Electronics Corp. v. WH-TV Broadcasting Co.*, 2003 U.S. Dist. LEXIS 13816, 2003 WL 21911066, at *2 (N.D. Ill. Aug. 7, 2003). Conversely, Ms. Chanda explains that the second part of the document (P-STA 1635-43) was prepared for her own use, distinguishing [*24] it from Document 1 and the issue presented in *McCook*, 192 F.R.D. at 255. Ms. Chanda does not state that this memorandum was communicated to other attorneys, or to the client, or that it memorializes such communications. Ms. Chanda's unclear and equivocal statement that "I believe that my notes [without identifying to the Court which part of this extended document constitutes her "notes"] reflect communications I had with Chris Thomas, a Stafford manager" is insufficient to carry Plaintiff's burden that the privilege should apply. Therefore, this section of Document 2 (P-STA 1635-1643) is not protected by the attorney client privilege and must be disclosed. *Id.*, 2003 U.S. Dist. LEXIS 13816, 2003 WL 21911066, at *2, n. 2 ("Such communications could be protected by the work product doctrine. However, [Plaintiffs] do not claim that the work product privilege applies to these documents, and accordingly that privilege is waived.").

Document 3: An email from a Kirkland attorney to Mr. Stafford and Stafford's in-house counsel regarding Stafford's potential insurance obligations to TD. PRIVILEGED.

Document 4: A memorandum prepared by an unidentified Kirkland attorney [*25] that was not disseminated to the client. There is no indication that it reflects client communications or was distributed to other Kirkland attorneys; Plaintiffs' counsel's affidavit states only that it was taken from Kirkland's files. Therefore, the document must be disclosed. *Zenith*, 2003 U.S. Dist. LEXIS 13816, 2003 WL 21911066, at *2, n. 2 ("Such communications could be protected by the work product doctrine. However, [Plaintiffs] do not claim that the work product privilege applies to these documents, and accordingly that privilege is waived.") NOT PRIVILEGED/MUST BE PRODUCED.

Documents 5 and 6: These documents are communications between key Stafford personnel and Stafford's in-

house counsel concerning the TD transaction for the purpose of providing legal advice. PRIVILEGED.

Documents 7 and 8: Document 7 is an email dated February 27, 2002, forwarding an email dated February 26, 2002. Both communications are between Stafford's in-house counsel and Stafford employees. However, the February 26th email was sent to Brian Sirois, whom Plaintiffs have failed to identify entirely. Document 8 is an email dated Dec. 12, 2001, forwarding a previous email, dated Dec. 11, 2001, The [*26] communications appear to be between Stafford's in-house counsel and Stafford, but also between the unidentified Mr. Sirois and a Mr. Brent Andrews, who is identified only as an "employee" of Stafford. Because Plaintiffs have failed to satisfy their burden of demonstrating that these communications were limited to key employees, the privilege does not apply. See *Muro v. Target Corp.*, 2006 U.S. Dist. LEXIS 86030, 2006 WL 3422181 at *2 (N.D. Ill. 2006). NOT PRIVILEGED/MUST BE PRODUCED.

Document 9: This email is from GS and forwards a draft agreement to Kirkland and key employees at Stafford. This document is particularly challenging, as it raises two issues: 1) should the Court extend the attorney-client privilege to third-party GS? and 2) is this an example of an attorney being asked to provide legal or business advice? As to the first question, it is clear that GS is forwarding confidential information, regarding information within its expertise, on behalf of Stafford. The Agreement is a draft of a business document and clearly contains business advice. However, it is heavily annotated with notes from Kirkland attorney Robert Hayward, and was given to Kirkland for the purpose of obtaining legal [*27] advice with regard to a number of the terms - requesting that Kirkland include language in the document regarding specific contingencies, and to comment upon certain tax issues. Therefore, the Court finds that the document is PRIVILEGED.

Document 10: This document is an email from a Stafford employee to Kirkland attorney Neil Hirschman, attaching an organizational chart. The chart appears to be a business document and, notably, appears to have been redacted, preventing the Court from properly evaluating the communication. Because Plaintiffs have failed to satisfy their burden, the chart must be disclosed. NOT PRIVILEGED/MUST BE PRODUCED.

Document 11: This is a communication from Kirkland to Stafford's in-house counsel reflecting legal advice on the proposed structure of the entities created by the TD transaction. PRIVILEGED.

Documents 12, 13, 14, and 15: These are communications from Kirkland to GS and (with regard to documents 12, 13 and 15) Stafford providing legal advice regarding

the drafting of the Asset Purchase Agreement and the structure of the TD transaction. Although the documents were shared with GS and contain business information, the Court is [*28] satisfied that GS was included as Stafford's agent and that Kirkland was providing primarily legal, not business, advice. *See Urban Box*, 2006 U.S. Dist. LEXIS 20648, 2006 WL 1004472, at *7 (S.D.N.Y. April 17, 2006) (discussing Document # 52). As such the communications are privileged. PRIVILEGED.

Document 16: This communication is an email from a key Stafford employee to, among others, TD, with attorney notes in the margin. Plaintiffs contend, and Defendants do not dispute, that the underlying email was produced (because it was sent to TD), but seek to withhold the attorney notes written on the margins of the email. [HN10] Attorney notes "reflecting client confidences and legal advice regarding certain transactions are" privileged. *In re Sulfuric Acid Antitrust Litigation*, 235 F.R.D. 407, 429 (N.D. Ill. 2006). PRIVILEGED

Document 17: A document from GS to Kirkland and Stafford. The email summarizes certain issues in the TD transaction. Once again, this communication walks the fine line between business and legal advice, but the Court is satisfied that the document primarily was sent for the purpose of seeking legal advice. For example, the document requests legal advice [*29] from Kirkland regarding regulatory issues, and the legal implications of structuring payout in a particular way. PRIVILEGED.

Document 18: A memorandum from Kirkland to Stafford and GS providing legal advice regarding requests made by TD's counsel. PRIVILEGED.

Document 19: A comparison of a former and current draft merger agreement from Kirkland to Stafford, Sullivan & Cromwell, and GS for the purpose of providing legal advice. PRIVILEGED.

Document 20: An email from GS forwarding to Kirkland term sheets for blacklining. Because GS was acting as Stafford's agent, seeking legal advice necessary to facilitate the transaction, the Court finds that the document is privileged. PRIVILEGED.

Document 21: An email from GS to Kirkland. The email does not contain legal advice or confidential client information. Therefore, the document must be disclosed. NOT PRIVILEGED/MUST BE PRODUCED.

Document 22: A comparison of a prior draft of a merger agreement with the proposed draft of a merger agreement prepared by Kirkland and sent to other Kirkland attorneys, Stafford and GS. Because this confidential communication contains legal advice, and was sent to GS [*30] as Stafford's agent, the document is PRIVILEGED.

Document 23: Emails between Stafford's key employees and in-house counsel regarding whether certain business information should be disclosed to TD. A review of the information indicates that in-house counsel is forwarding the information so that, a business-as opposed to legal - decision can be made. Counsel was neither asked for nor provided legal advice, but was merely forwarding a request made by TD that required what appears to be a business decision. *See Urban Box*, 2006 U.S. Dist. LEXIS 20648, 2006 WL 1004474, at *8 (email from attorney to financial advisor and client advising them of the substance of a communications with opposing counsel, not privileged.) NOT PRIVILEGED/MUST BE PRODUCED.

Document 24: In a filing submitted on January 10, 2007, Plaintiffs explained that they have produced a redacted version of this document to Plaintiffs. As redacted, this communication is PRIVILEGED.

Document 25: Plaintiffs contend that this Chart, prepared by Kirkland, was created for the purpose of providing legal advice and that it reflects legal advice, and that it was distributed to Stafford, GS and Sullivan. In his affidavit, [*31] Kirkland attorney Robert Hayward explains that the chart is a draft spreadsheet estimating potential distributions under a draft agreement, based upon his analysis of the terms of the agreement. While the Chart appears to consist entirely of business advice, Mr. Kayward's affidavit statement that the Chart involved legal interpretation of the TD transaction documents is sufficient to convince the Court that the document is privileged. PRIVILEGED.

Documents 26 and 27: Emails with attachments for review from Kirkland to Stafford's in-house counsel, managing directors and GS containing legal advice. PRIVILEGED

Document 28 and 29: Emails from Stafford's managing director to Kirkland, other Stafford officers, and GS seeking legal advice regarding the terms of a promissory note executed in connection with the TD transaction. Including GS in the communications does not destroy the attorney-client privilege, because GS's knowledge of the transaction is relevant to the inquiry. PRIVILEGED.

Document 30: Charts forwarded by human resources to in-house counsel. While a portion of the communication related to forwarding the charts to counsel may be privileged, *see* [*32] Document 24, Plaintiffs have not sufficiently explained why these charts, which contain purely business information, are privileged. NOT PRIVILEGED/MUST BE PRODUCED.

Document 31: An email from Stafford's Managing Director, responding to the email identified in the privi-

lege log as Document 21. As discussed above, the email in Document 21 contains purely business advice and is not privileged. Stafford's Managing Director's response to that email does not impart or request legal advice. NOT PRIVILEGED/MUST BE PRODUCED.

Document 32: An email from GS to Kirkland requesting legal advice regarding an attached term sheet. In addition, the attached term sheet contains Mr. Hayward's handwritten notations. Because GS was acting as Stafford's agent for the purpose of obtaining legal advice, the document is privileged. PRIVILEGED.

Document 33: The document is a Project Choice Term Sheet sent from GS to Kirkland, that is heavily annotated by Kirkland. Plaintiffs have produced to Defendants a copy of this document redacting Kirkland's notations, as well as that content which reflects requests for legal advice. PRIVILEGED.

Document 34: Charts reflecting which employees [*33] signed certain types of employment agreements sent by a Stafford human resources employee to Stafford's in-house counsel. As discussed above in Document 30, the charts are not privileged. NOT PRIVILEGED/MUST BE DISCLOSED.

Document 35: Email from Kirkland to Stafford, in-house counsel, and GS seeking information for the purpose of providing legal advice. PRIVILEGED.

Document 36: Email from Kirkland attorney to GS and other Kirkland attorneys regarding the TR/Stafford Structure proposal. GS's inclusion in the communication is clearly as Stafford's agent. PRIVILEGED.

Document 37: Email and attachments from Kirkland to Stafford, GS and other Kirkland attorneys requesting all parties to review and comment on proposed TD transaction documents. PRIVILEGED.

Document 38: Email from Kirkland to Stafford's in-house counsel and key employees seeking information regarding employment agreements for the purpose of providing legal advice. PRIVILEGED.

Document 39: As discussed in Document 30 above, these charts neither reveal, request, nor contain legal information. In addition, there is nothing confidential about the communication between counsel and human [*34] resources. Nor does the communication contain or reveal legal advice. NOT PRIVILEGED/MUST BE DISCLOSED.

Document 40: An internal Kirkland email forwarding a communication and attachment from a key Stafford employee to Kirkland and other key Stafford employees for the purpose of obtaining legal advice regarding the structure of the businesses as relevant to the TD transaction. PRIVILEGED.

Document 41: An email from Stafford's managing director to in-house counsel and other Stafford employees. The email appears to contain confidential information provided to counsel for the purpose of providing legal advice. PRIVILEGED.

Document 42: Term sheet provided to Kirkland from GS for the purpose of obtaining legal advice. PRIVILEGED.

Document 43: Communications between GS, key Stafford employees, and Kirkland seeking legal advice regarding TD employment agreements required for the TD transaction, as well as attorney notes. PRIVILEGED.

Document 44: A list forwarded by a Stafford human resources employee to Stafford's in-house counsel. As discussed above in Documents 30 and 39, there is no indication that the information was confidential or represents [*35] anything other than a business document. NOT PRIVILEGED/MUST PRODUCE.

Document 45: Communications between key Stafford employees, in-house counsel, Kirkland and GS for the purpose of providing legal advice. PRIVILEGED.

Document 46: This is a memorandum prepared by an unidentified Kirkland attorney (while Robert Hayward identifies the memorandum as being Kirkland's, he does not claim to have authored or reviewed it) proposing revisions to legal document for the TD Transaction. As discussed above, attorney memoranda to file that are not shared with other attorneys or do not reflect confidential client communications are not privileged. NOT PRIVILEGED/MUST BE DISCLOSED.

Document 47: Summary of proposed transaction documents prepared by Kirkland for Stafford's in-house counsel and GS. PRIVILEGED.

Document 48: Document 48 is a duplicate of Document 39, which the Court has already determined is Not Privileged. The attorney notes on the document, however, are Privileged.

Document 49: A Project Choice Term Sheet prepared by GS and shared with Kirkland and Stafford's in-house counsel regarding the structure of the TD transaction, which includes in-house [*36] counsel's handwritten notes. PRIVILEGED.

Document 50: This is the initial communication identified in Document 48, sans the handwritten notes, which line Court has already determined is not privileged. NOT PRIVILEGED/MUST BE DISCLOSED.

Document 51: Kirkland attorney's handwritten notes reflecting information given to attorney by Stafford for the purpose of obtaining legal advice. PRIVILEGED.

Document 52: Communication from Kirkland to Stafford's key employees, including in-house counsel, and GS requesting that the recipients review the attached documents and provide information necessary to render legal advice. PRIVILEGED.

Addendum Documents: Finally, Plaintiffs submitted to the Court on January 10, 2007, five communications in redacted form. The following communications represent a redacted string of emails between in-house counsel, key Stafford personnel, and GS regarding non-compete agreements: Bates Stamp Nos: 18259-18261; 18262-18266; 18255-18258, and 18399-18401. The documents are largely repetitive, representing the progression of the email string. Upon review, the Court agrees that the redacted portion of the emails represents privileged [*37] communications and therefore need not be disclosed.

In addition, Plaintiffs have submitted a redacted communication between Kirkland, GS and Stailord. See Bat GS Stamp Nos. STA018386-STA018389. Upon review, the Court finds that the redacted portions of the communication consist of legal advice and are PRIVILEGED.

CONCLUSION

For the reasons set forth above, Defendants' Motion is granted, in part, and denied in part.

DATE: February 22, 2007

ENTERED:

ARLANDER KEYS

United States Magistrate Judge

102F28

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Print Number: 1862:67175589

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8000 UTOPIA PKY
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Print: Oct 27, 2007

75905802

DESIGN MARK

Serial Number
75905802

Status
REGISTERED

Word Mark
PERFORMANCE PLATFORM

Standard Character Mark
No

Registration Number
2497108

Date Registered
2001/10/09

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
Performance Platform, Inc. CORPORATION WASHINGTON 1912 S. 146th St.,
Suite 102 Seattle WASHINGTON 98168

Goods/Services
Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S:
adjustable angle golf platform for practicing golf shots, simulating
uphill, downhill, and sidehill lies. First Use: 2000/10/13. First
Use In Commerce: 2000/12/10.

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2000/01/28

Examining Attorney
MAYERSCHOFF, GLENN

Print: Oct 27, 2007

76009243

DESIGN MARK

Serial Number
76009243

Status
REGISTERED

Word Mark
OSTEO MATRIX

Standard Character Mark
No

Registration Number
3121063

Date Registered
2006/07/25

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
SHAKLEE CORPORATION CORPORATION DELAWARE 4747 WILLOW ROAD PLEASANTON
CALIFORNIA 94588

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Nutritional SUPPLEMENTS. First Use: 2006/01/07. First Use In
Commerce: 2006/01/07.

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2000/03/24

Examining Attorney
DEFORD, JEFF

Attorney of Record
LISA M. CALDWELL

Print: Oct 27, 2007

76382312

DESIGN MARK

Serial Number

76382312

Status

REGISTERED

Word Mark

PRO PLATFORM

Standard Character Mark

No

Registration Number

2695283

Date Registered

2003/03/11

Type of Mark

TRADEMARK

Register

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Mark Drawing Code

(1) TYPED DRAWING

Owner

Tomko Sports Systems, Inc. CORPORATION CANADA #165 - 6660 Graybar Road
Richmond, British Columbia CANADA V6W 1H9

Goods/Services

Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S: Golf
practice mats having artificial grass surfaces. First Use:
2001/06/29. First Use In Commerce: 2001/11/27.

Foreign Country Name

CANADA

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

1115749

Foreign Filing Date

2001/09/13

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2002/03/13

Examining Attorney

FOSTER, STEVEN

Attorney of Record

Jennifer Lee Taylor

Print: Oct 27, 2007

78111238

DESIGN MARK

Serial Number

78111238

Status

REGISTERED

Word Mark

OSTEO PEAK

Standard Character Mark

No

Registration Number

2719413

Date Registered

2003/05/27

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

OCT USA, INC. PARTNERSHIP CALIFORNIA 20695 S. Western Ave., #242
Torrance CALIFORNIA 90501

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Dietary supplements made from herbal extracts. First Use: 2002/01/31.
First Use In Commerce: 2002/02/01.

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2002/02/26

Examining Attorney

BODSON, MICHAEL E.

Print: Oct 27, 2007

78280258

TYPED DRAWING

Serial Number
78280258

Status
REGISTERED

Word Mark
OSTEO SYMMETRY

Standard Character Mark
No

Registration Number
2911814

Date Registered
2004/12/14

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(1) TYPED DRAWING

Owner
MS. LINDA WHITE INDIVIDUAL UNITED STATES 13490 MAHOGANY DRIVE RENO
NEVADA 89511

Goods/Services
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Educational Services, namely, conducting courses, seminars and workshops in the fields of physical therapy, massage therapy and body work. First Use: 2003/02/28. First Use In Commerce: 2003/02/28.

Goods/Services
Class Status -- ACTIVE. IC 044. US 100 101. G & S: Physical therapy and massage therapy using movement, tension, resistance and points of balance to restore natural body movement and posture. First Use: 2003/02/28. First Use In Commerce: 2003/02/28.

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2003/07/29

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78280258

Examining Attorney
OSBORNE, STANLEY I.

Attorney of Record
Lara Pearson

Print: Oct 27, 2007

78607686

DESIGN MARK

Serial Number
78607686

Status
REGISTERED

Word Mark
OSTEO FUSION

Standard Character Mark
Yes

Registration Number
3197532

Date Registered
2007/01/09

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Nature's Sunshine Products, Inc. CORPORATION UTAH 75 East 1700 South
Provo UTAH 84605

Goods/Services
Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Nutritional and dietary supplement; namely, liquid calcium supplement.
First Use: 2005/09/13. First Use In Commerce: 2005/09/13.

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Filing Date
2005/04/13

Examining Attorney
KIM, SOPHIA S.

Attorney of Record
Michael E. Mangelson, Esq.

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Welcome to avoidboneloss.com

A website created to help you prevent osteoporosis and select competent, education-oriented medical professionals. This web page gives preventative tips. Other avoidboneloss.com pages provide the following types of information:

- [Short answers to basic questions about osteoporosis](#)
- [How to get maximum benefit from your bone density tests](#)
- [How to be a savvy patient](#)

If you're interested in buying supplements, drugs, herbs, or "miracle" cures for osteoporosis, you'd better go elsewhere. There are no shopping carts on this website. Besides providing consumer tips on how to maintain your bones, avoidboneloss.com tells you where you can buy my new book *Osteoporosis Prevention: A Proactive Approach to Strong Bones and Good Health*. This website also gives some background information about me under [Author Interview](#).

Ten Tips for Preventing Osteoporosis

1. Keep active and exercise your entire body. Walking is not sufficient; it targets the feet, ankles and legs, not your hips, spine and wrists. According to the U.S. Surgeon General "The evidence suggests that the most beneficial activity regimens for bone health include strength-training or resistance-training activities. These activities place levels of loading on bone that are beyond those seen in everyday activities." (Page 171 of *Bone Health and Osteoporosis: A Report of the Surgeon General*)

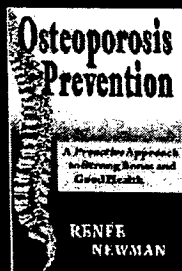
For optimal results, you should have a well-rounded exercise program that targets the weak areas of your skeleton. For example, if you have low bone mass in your hips, it helps to add hip exercises such as squats, lunges, and single leg lifts (side, front and back) with and without weights, and to use the hip adduction and abduction machines at a gym. **Consult your doctor before beginning an exercise regime**, start gradually, and have professionals verify that you're doing exercises correctly. If you have osteoporosis, have a physical therapist show you which exercises are safest and best for you.

2. Get good nutrition. For example, in place of soda pop, drink fruit juice, vegetable juice, milk, and/or calcium-fortified soy milk. Instead of doughnuts and packaged cookies, eat frozen yogurt, fruit desserts, low-fat ice cream, muffins made at home or at a bakery, etc. Instead of snacking on potato chips or pretzels, have some unsalted almonds and walnuts, which offer a variety of beneficial nutrients for your heart and your bones. A well-balanced diet high in fruits and vegetables and low in saturated or trans fat is ideal.

3. Take vitamin and mineral supplements if you're not getting enough calcium, vitamin D, magnesium and other bone nutrients from your diet. Chapters 8 and 9 in *Osteoporosis Prevention* will help you determine if you're getting enough of the most important bone nutrients. Lately there's been a lot of emphasis on getting enough vitamin D in order to promote calcium absorption. Some doctors are now recommending 800-1000 IU per day.

At the 2007 National Osteoporosis Foundation Symposium, several speakers stated that roughly 50% or more Americans are Vitamin D deficient and they recommended getting a Vitamin D blood test before starting prescription medication. Higher intakes of at least 700 IU of Vitamin D3 per day were recommended.

4. Avoid smoking and excessive drinking. They impair calcium absorption and inhibit the growth of bone-building cells.

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- 5. Consider adding soy foods to your diet.** They contain plant estrogens, which may help reduce bone loss.
- 6. If the preceding measures aren't sufficient for maintaining adequate bone density, consider taking preventive medication.** Chapter 11 in *Osteoporosis Prevention* discusses the advantages and disadvantages of various osteoporosis drugs. Discuss those with your physician. A key consideration should be the drug's effectiveness at preventing both vertebral and non-vertebral fractures.

A few doctors have stopped prescribing bisphosphonate drugs (e.g. Fosamax, Actonel, Boniva) for more than five years because studies have not shown a fracture benefit past five years and because they want to avoid over-suppressing bone turnover (the natural process of breaking down and building up of bone) in their patients.

- 7. If your bone density is low, find out about dynamic motion therapy when it becomes available in your area.** This involves standing for 10–20 minutes a day on a medical device that has sound waves designed to stimulate bone formation. Last year (2006), it was approved and introduced as an osteoporosis therapy in Europe, Canada, Australia, and a number of other countries in Asia and South America by the Juvent company after more than twenty years of research. I had an opportunity to see the device and talk to company officials in Ireland just after it was launched on the market there.

Recently I saw them at the 2007 National Osteoporosis Foundation Symposium. They told me that the Juvent product (Juvent 1000) is now registered with the FDA as a Class 1 device and is being sold in the US for muscle strength and restoration because it stimulates key muscles such as the calf (soleus) muscle, which controls postural stance and balance. As a result, it helps prevent falls, fractures and muscle loss. The Juvent 1000 is currently being tested in non-company funded clinical trials on bone loss in America in order for it to receive FDA approval as a treatment for osteoporosis in the US.

NASA has co-funded many of the research studies behind Juvent's technology and is co-funding a study to evaluate DMT's efficacy in weightless conditions. Scientists hope that the technology behind the Juvent device can be used on the space station to help prevent the bone loss in astronauts that occurs in zero-gravity conditions.

A few people have started to market ordinary vibrating exercise machines as osteoporosis products. Some of these machines are unsafe and can cause permanent nerve damage. Before buying and using vibrational devices for osteoporosis prevention or muscle restoration, find out if they have been medically approved and shown to be safe and effective in clinical trials. Currently no medically approved devices are available in the U.S. for the treatment of osteoporosis. For more information, see Chapter 12 in *Osteoporosis Prevention*.

- 8. Learn about bone density tests before being tested.** You'll profit more from the results. Bone density tests don't just tell you whether or not you have osteoporosis. They can give information that will help you design an exercise program to strengthen areas of low bone density; moreover, the images can reveal a variety of other medical problems you may not be aware of. It's helpful to deal with a testing center and specialist that will provide this information. For more details click on [density tests](#), [sample reports](#), and see Chapters 13, 14, 15 and 17 in *Osteoporosis Prevention*.

- 9. If possible, select an information-oriented test center that provides detailed reports of the spine and hip and that will discuss the results with you.** Besides serving as a diagnostic tool, the results on bone density reports can help you select exercises that are right for your needs. See Chapter 15 in *Osteoporosis Prevention*.

- 10. Ask for copies of your bone density reports and chart your progress.** People who are involved in their health care and who discuss the results with their doctors are more motivated to take preventative measures to maintain their bone health.

It's never too late to take steps to avoid bone loss. However, the sooner you start, the easier it is to prevent osteoporosis. In so doing, you'll also improve your overall health.

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Current issue

Bone shaker could fight wasting diseases

19:00 08 August 2001

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Ian Sample

People with bone wasting conditions could do with a good shaking, according to US scientists. They found that sheep that spent time standing on a vibrating plate developed much stronger bones than those that did not.

"The animals would line up to go on this thing," says Clinton Rubin at the State University of New York. "And if you used your imagination, they looked like they were smiling." Scientists previously thought that bones were only strengthened when subjected to the kinds of strains produced by activities like walking or running. But Rubin says that even when a person stands still, the bones in their legs are subjected to small cycling strains - due to muscle activity - that could have an effect on bone cells.

To check, Rubin rounded up a herd of sheep and set about shaking them. Each sheep stood on a plate which vibrated imperceptibly - producing tiny strains in the sheep's limbs at 30 cycles a second. After a year's treatment of 20 minutes, five days a week, Rubin measured how much bone the sheep had gained in their legs. "We saw that this produced tonnes of bone - a 35 per cent increase."

Bone building

Rubin says that the technique might work for people with osteoporosis and Peter Augat, at the University of Ulm, Germany, says the idea of treating people who can not walk easily is appealing - if it works

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- 10 Arthritis
- 11 The 300 Workout
- 12 Foods for Men

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- 1 Pregnancy
- 2 Parenting
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- 6 Diet and Nutrition
- 7 Chronic Pain
- 8 Depression
- 9 Cancer
- 10 Men's Health
- 11 Mental Health
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Health News

Gentle Vibration Prevents Bone Loss.

By Laurie Barclay, MD Reviewed by Gary D. Voisin, MD
WebMD Medical News

Aug. 8, 2001 — A new study is giving out good vibrations.

The study, in this week's *Nature*, suggests that gentle vibration can improve bone growth. If the findings hold up in humans, they suggest a new way to prevent osteoporosis, or bone loss often seen in menopause, without drugs.

"Exercise may prevent osteoporosis, but we always thought it had to be short bursts of intense activity," researcher Clinton Rubin, PhD, tells WebMD. "Our work now shows that even very low levels of mechanical stimulation promote bone growth."

Without the force of gravity pulling on the skeleton, astronauts lose bone at the rate of 0.2% per month, Rubin explains. Conversely, a professional tennis player may have 30% more bone on his playing arm.

"The skeleton is a smart material accommodating the demands placed on it," says Rubin, a professor and chair of biomedical engineering and director of the Center for Biotechnology at SUNY Stony Brook. "Unfortunately, most of us tend to sit around too much, so bones get weaker."

In his study, adult female sheep treated with gentle vibration to their hind legs for 20 minutes daily had 30% more bone in their legs than did untreated animals after one year.

"This is very exciting, as it suggests ways to treat bone loss without drugs," says Robert Marcus, MD, a professor of medicine at Stanford University who reviewed the study for WebMD.

"Although there are FDA-approved drugs to prevent bone loss in menopause, most women probably don't want to take a drug every day for 40 years," Rubin says.

Or in some cases, the women can't take the drugs. Such is the case with two patients in Bangor, Maine followed by Cliff Rosen, MD, president of the American Society of Bone and Mineral Research. Because of other medical problems, they are unable to take any drugs or do any exercise for their severe osteoporosis, but seem to be responding to gentle mechanical stimulation.

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but seem to be responding to gentle mechanical stimulation.

"We're very excited about this approach, which could be an alternative or even a mainstream therapy," Rosen tells WebMD.

With his co-workers, Rubin is already testing the effects of gentle vibration on bone loss in 64 postmenopausal women. Half of them stand on a vibrating platform resembling a bathroom scale for 20 minutes daily, five days weekly, while the other half stand on a similar device that does not vibrate. The forces involved are so gentle that the women can't tell whether or not the platform is vibrating. Rubin says it's still too early to be sure how his study is turning out, but calls it "very encouraging."

"The absolute worst thing you can do to the skeleton is to put it to rest," Marcus tells WebMD. "While active people seem to have less risk of brittle bones as they get older, not every woman who goes through the change feels like running a marathon."

"We're trying to trick a 68-year-old skeleton into thinking it's a 23-year-old skeleton," Rubin says.

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Fitness; Whole lotta shakin' going on, but is it safe?; Vibration exercise machines can shake more than trucks or tractors. But advocates deny they're harmful. Los Angeles Times October 29, 2007 Monday [\(Copy w/ Cite\)](#)

Pages:

and build bone.

Some research suggests the machines may provide moderate benefits, but researchers at the Johnson Space Center in Houston have found that the machines also may exceed occupational safety standards for **vibrating** equipment such as trucks and heavy machinery.

The investigators attached accelerometers and motion trackers to the **vibration platforms** and to the legs, torso and head of 16 subjects and measured the direction and magnitude of **vibration** experienced by the subjects as they performed partial squats. Subjects were exposed to 15-second bouts of 30 one-cycle-per-second (or hertz) **vibration** -- a common setting for these machines.

The nine men and seven women were tested on a Power Plate, which does an up-and-down type of **vibration**, and a Galileo 2000, which does a rotational **vibration**, pushing one foot up and then the other.

The researchers found that 10 minutes of **vibration** on the machines exceeded the recommended daily whole-body **vibration** exposure as defined by the ISO, or International Organization for Standardization.

Chronic exposure to whole-body **vibration**, such as that experienced by operators of tractors and helicopters, has been associated with injury to the spine, **osteoarthritis**, visual impairment and damage to the vestibular system.

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NOT SO GOOD VIBRATIONS - POWER PLATE IS NO EASY FIT The New York Post July 20, 2006 Thursday (Copy w/ Cite)

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HEADLINE: NOT SO GOOD VIBRATIONS - POWER PLATE IS NO EASY FIT

BYLINE: Marina Vataj

BODY:

Fitness wonks and laggards alike are buzzing about the Power Plate, a new exercise device dubbed the "miracle machine" that takes the work out of working out.

Step onto the machine, flip a switch and intense **vibrations** make your muscles contract at speeds up to 50 times a second. No less a physical specimen than Madonna herself is said to step onto the \$14,000 **vibrating platform** to shape, sculpt and tone.

While Madge has a Power Plate of her own, The Post trekked up to Core Fitness to find out if it really can work wonders.

The results were, um, a bit shaky.

"I believe in this machine," said Michael Margulies, owner of the Upper East Side gym. He charges clients up to \$60 for a 20-minute ride - the maximum allowed.

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NOT SO GOOD VIBRATIONS - POWER PLATE IS NO EASY FIT The New York Post July 20, 2006 Thursday (Copy w/ Cite)

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The machine requires work - a lot more than a typical day at the gym.

Margulies says there are the two ways to use the machine, "dynamic" and "static" - and both are quite exhausting.

For static - the easier of the two -you need to hold laborious positions for several minutes at a time. Squats and lunges are hard enough on solid ground, add in those 50 shakes a second and they're nearly impossible.

And even though the Power Plate is made so beginners can use it, it's hard enough just keeping your balance on the machine, much less doing a crunch while enduring incredibly uncomfortable rapid **vibrations** shooting through your entire body - reaching organs that should only be touched by a skilled surgeon.

After one session, I felt like I was carrying around an entrails shake.

Still, Marqules considers it sensational.

"I have a 90-year-old client who used the machine, and when he got off, he said he felt like he could walk better," he says.

Proponents say the machine prevents arthritis and improves **osteoporosis**, and many athletic trainers are turning to the Power Plate to help get athletes in better shape.

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NEW BUZZ ON AN OLD WORKOUT FAD The Boston Globe July 08, 2006 Saturday (Copy w/ Cite)

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BODY:

Remember the **vibrating** belts that were supposed to melt fat away? A new **vibration**-based fitness fad is sweeping into Massachusetts, targeting flabby boomers and weak-boned senior citizens. The pitch this time: Just standing on a **vibrating platform** can strengthen bone and muscle, and exercising on the **platform** can boost athletes' performance.

Unlike the gimmickry of the old **vibrating** belts, there is a growing body of small studies that suggests that the **vibrating platforms** may actually work, although not specifically for weight loss.

The National Aeronautics and Space Administration sees enough potential that it is funding research on whether the machines can counter the damaging effects of weightlessness. Boston scientists are about to launch a large study to determine whether just 10 minutes a day can reduce **osteoporosis**.

"It's really appealing," said Marian T. Hannan, who will oversee the study as codirector of musculo skeletal research at Hebrew SeniorLife, an organization that cares for and studies the elderly. "To stand on a **platform** and prevent **osteoporosis** would be heavenly. Animal models and preliminary data [are] incredibly promising. But it's not quite ready for prime time yet."

Entrepreneurs aren't waiting for the definitive science, however. In advertising campaigns that have been stepped up over the last few months, manufacturers say that standing on the **platform** elevates mood, boosts strength, "increases

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platform

• **noun** 1 a raised level surface on which people or things can stand. 2 a raised structure along the side of a railway track where passengers get on and off trains. 3 a raised structure standing in the sea from which oil or gas wells can be drilled. 4 the declared policy of a political party or group. 5 an opportunity for the expression or exchange of views. 6 a very thick sole on a shoe. 7 Computing a standard for the hardware of a computer system, which determines the kinds of software it can run.

— ORIGIN French *plateforme* 'ground plan', literally 'flat shape'.

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

RESPONSE TO OFFICE ACTION # 2

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78873139
LAW OFFICE ASSIGNED	LAW OFFICE 114
MARK SECTION (no change)	
ARGUMENT(S)	

Reconsideration of this application in view of the accompanying remarks is respectfully requested.

The Examining Attorney has twice refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1) on the grounds that the mark OSTEO PLATFORM merely describes the goods recited in the application. The Office Action alleges that the proposed mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the relevant goods, and, in support of the allegation, relies on the attached "dictionary definitions" of OSTEO and PLATFORM. The identification of goods in the application is clear. In order to support the rejection, the Examining Attorney must prove that "OSTEO PLATFORM" merely describes a medical apparatus, namely, vibration plates for therapeutic purposes. As shown herein, the material attached to the Office Action and the arguments presented in the Office Action do not provide an adequate basis to support the refusal to register. It is respectfully submitted that the refusal should be withdrawn since OSTEO PLATFORM is a unique identifier that Applicant has associated with a medical apparatus for therapeutic purposes.

To determine whether a mark is descriptive or suggestive, the courts and the U.S. Trademark Office Trial and Appeal Board frequently use the "degree of imagination test." See, e.g., No Nonsense Fashions, Inc. v. Consolidated Foods Corp., 226 U.S.P.Q. 502, 507 (TTAB 1995). "A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods." Stix Products, Inc. v. United Merchants & Mfrs., Inc., 160 U.S.P.Q. 777, 785 (S.D.N.Y. 1968). "If the mental leap between the word and the product's attributes is not almost instantaneous, this strongly indicates suggestiveness, not direct descriptiveness." McCarthy, McCarthy on Trademarks and Unfair Competition, 3rd ed. pp. 11-109 (1996) (citing Inventacorp Inc. v. Arabian Investment Banking Corp., 19 U.S.P.Q.2d 1056 (11th Cir. 1991)).

It is respectfully submitted that OSTEO PLATFORM in no way instantaneously describes a medical apparatus, namely vibration plates for therapeutic purposes. In reality, OSTEO PLATFORM is a composite phrase[1] which may be suggestive at best, since PLATFORM actually connotes a "system on which programs or operating systems operate" (see

attached definitions) and not merely "a raised level service on which people or things stand" as contended by the Examining Attorney. In accordance with a search performed on GOOGLE for the word PLATFORM, "PLATFORM" has different meanings depending on how the term is used. However, the first page of Google, showing 9,490,000 hits for the word, illustrates that platform refers to of or relating to computer software and programs and operating system platforms (see printout of first page of google search). The word platform in no way describes a medical apparatus used for therapeutic purposes. Thus, the term "PLATFORM" is suggestive because it requires imagination, thought and perception to reach a conclusion as to the nature of the goods and the mental leap between the word and the product's attributes is not almost instantaneous. Accordingly, linking together "OSTEO" and "PLATFORM" creates an impressive sounding composite non-sequitur, which, by definition, cannot "describe" the goods it is accused of describing. A new and unique commercial impression has been created by the composite phrase. According to the Trademark Manual of Examining Procedure §1209.03(d), "a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods."

Indeed, to paraphrase the analysis stated in Airco, Inc. v. Air Products & Chemicals Inc., 196 U.S.P.Q. 832, 835 (TTAB 1977): "the literal meaning of the mark [OSTEO PLATFORM] may, through an exercise of mental gymnastics and extrapolation suggest or hint at the nature of applicant's [goods], i.e., [medical apparatus, namely, vibration plates used for therapeutic purposes], but it does not, in any clear or precise way, serve to describe those [goods]." Thus the "imagination test" strongly supports the conclusion that OSTEO PLATFORM is not descriptive of a medical apparatus for therapeutic purposes.

The next inquiry in a determination of descriptiveness or suggestiveness is the "competitor's need test." See, e.g., No Nonsense Fashions, Inc., *supra* at 508. The "need test" focuses on the extent to which a mark is actually needed by competitors to identify their goods. It is respectfully submitted that the applicant's competitors do not need to use the mark OSTEO PLATFORM to identify their own medical apparatus, namely, vibration plates for therapeutic purposes, i.e., what competitor *needs* to use this phrase to describe a medical apparatus? The answer is: it is not necessary, especially in view of the incongruous meaning of the mark.

Furthermore, a Google search of the word OSTEO PLATFORM did not result in any hits (see attached first page of hits) using the two words together. Accordingly, companies are not using the term for vibration plates for therapeutic purposes.

The Examining Attorney attempts to provide evidence of the alleged descriptive nature of the proposed mark, but

the excerpts attached to the Office Action include what appears to be the present applicant's proposed goods. There is no other "public use" citation contained in the Office Action. In essence, the Examining Attorney has cited no usage of OSTEOPATHY, other than copies of the Applicant's website, that create any nexus between OSTEOPATHY and a medical apparatus, namely vibration plates, for therapeutic purposes. Indeed, the Examining Attorney has failed to find any instances of use, other than the present applicant's, which joins the terms "OSTEO" and "PLATFORM" for a description of any product or service, thus supporting Applicant's position on the "competitor's need test". It is respectfully submitted that the evidence provided are wholly inadequate to support an objection based on descriptiveness.

Furthermore, it is also respectfully submitted that the two definition citations which does not even link the two words together is wholly inadequate to support an objection based on descriptiveness. Reconsideration of the descriptiveness rejection is respectfully requested.

Accordingly, and in view of the remarks set forth above, it is believed that the application is in condition for allowance and placement on the Principal Register. The Examining Attorney is urged to contact Applicant's attorney at the number indicated if there are any remaining issues to be resolved.

[1] The determination of whether the composite mark has a descriptive significance turns upon the question of whether the combination of terms evokes a new and unique commercial impression. See TMEP §1209.03(d).

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DESCRIPTION OF EVIDENCE FILE

a copy of the first page of google search results for the word "platform" and a copy of the first page of google search results for the word "osteoplat form"

SIGNATURE SECTION

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David M. Carter

SIGNATORY'S POSITION

Attorney for Applicants

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Request for Reconsideration after Final Action

Serial Number: 78873139

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

OFFICE ACTION # 2

Jennifer Vitale *PML*

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From: ECom114 [Ecom1143@USPTO.GOV]
Sent: Monday, April 23, 2007 12:03 PM
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Attachments: OsteoDef1.jpg; PlatformD1.jpg; AppSite1-1.jpg

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SERIAL NO: 78/873139

APPLICANT: Juvent, Inc.

78873139

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2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/873139

THIS IS A FINAL ACTION

The Office has reassigned this application to the undersigned trademark examining attorney.

4/23/2007

This letter responds to the applicant's communication filed on February 22, 2007.

REQUIREMENT SATISFIED

The following requirement has been satisfied and is withdrawn: (1) requirement for information.

FINAL REFUSAL

The following refusal is hereby made final.

1) Descriptiveness Refusal Pursuant to Section 2(e)(1)

The applicant has applied for registration of the mark, OSTEO PLATFORM for "medical apparatus, namely, vibration plates for therapeutic purposes."

Registration was refused under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1), because the proposed mark is merely descriptive. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.* For the reasons below, the refusal under Section 2(e)(1) is maintained and made FINAL.

As stated in the first office action dated August 25, 2006, a mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods and/or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). Here, applicant's mark describes the characteristics, function, features, purpose and/or use of applicant's goods. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a).

The word, "osteo," is a derivation of the Greek word, osteon and refers to the bones. The fact that this term is an abbreviation of the complete and more commonly used word, osteoporosis, does not diminish the descriptiveness of the term. Abbreviations of descriptive terms are descriptive if they convey to consumers the descriptive connotation of the original term. *See e.g., Martell & Co. v. Societe Anonyme de La Benedictine*, 116 F.2d 516, 48 U.S.P.Q. 116 (C.C.P.A. 1941); *see also* the attached Internet evidence showing the use of the term osteo by the International Osteoporosis Foundation Internet site and the attached article excerpts.

The word "platform" refers to a "raised level service on which people or things can stand." *See* the attached dictionary definitions from the *Compact Oxford English Dictionary*.

As the pages from applicant's Internet site and other sites show, applicant's products include "vibration platforms" for use in the treatment of osteoporosis. Therefore, the combined wording OSTEO PLATFORM is descriptive of applicant's medical apparatus for treating osteoporosis and registration must be refused in accordance with the Trademark Act.

Applicant's Argument

Applicant asserts that the term "osteo" has been registered repeatedly as part of a series of marks provided by the applicant with applicant's response. These marks each contain wording, design or other features that make comparisons to applicant's mark impossible and thus make them of little relevance in determining the descriptiveness of applicant's mark. Moreover, the goods and/or services of the cited

marks differ greatly from those of the applicant.

Furthermore, third-party registrations are not conclusive on the question of descriptiveness. Each case must be considered on its own merits. A proposed mark that is merely descriptive does not become registrable simply because other similar marks appear on the register. *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977); TMEP §1209.03(a).

Likewise, the fact that an applicant may be the first and sole user of a merely descriptive or generic designation does not justify registration where the evidence shows that the term is merely descriptive of the identified goods and/or services. *In re Acuson*, 225 USPQ 790 (TTAB 1985) (COMPUTED SONOGRAPHY descriptive of ultrasonic imaging instruments); *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983) (SHOOTING, HUNTING, OUTDOOR TRADE SHOW AND CONFERENCE held apt descriptive name for conducting and arranging trade shows in the hunting, shooting and outdoor sports products field); TMEP §1209.03(c).

Applicant also argues that the word "platform" is descriptive "as applied to merchandise relating to computer goods" and therefore must not be descriptive of applicant's "vibration plates for therapeutic purposes."

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT PC-DOS found merely descriptive of "computer programs recorded on disk" where relevant trade uses the denomination "concurrent" as a descriptor of this particular type of operating system); *see* TMEP §1209.01(b). The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Industries*, 222 USPQ 258 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Champion International Corp.*, 183 USPQ 318 (TTAB 1974); TMEP §1209.03(e).

Moreover, applicant has stated in its response that, "applicant's goods do involve the use of a platform area on which the users stand." Thus, the descriptiveness of the mark in relation to the goods has already been clearly established.

Applicant also contends that the mark is unitary with a "unique, non-descriptive meaning," but has not suggested what other non-descriptive meaning might apply or specifically how the mark is unitary. The examining has carefully considered these assertions but has therefore found them to be unpersuasive.

A mark that combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968) (holding SUGAR & SPICE not to be merely descriptive of bakery products). However, the mere combination of descriptive words does not automatically create a new nondescriptive word or phrase. *E.g., In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988) (finding GROUP SALES BOX OFFICE descriptive for theater ticket sales services). The registrability of a mark created by combining only descriptive words depends on whether a new and different commercial impression is created, and/or the mark so created imparts an incongruous meaning as used in connection with the goods and/or services. Where, as in the present case, the combination of the descriptive words creates no incongruity, and no imagination is required to understand the nature of the goods and/or services, the mark is merely descriptive. *E.g., In re Copytele Inc.*, 31 USPQ2d 1540, 1542 (TTAB 1994); *Associated Theatre Clubs*, 9 USPQ2d at 1662.

Conclusion

It is clear from the record that the applicant's mark is not suggestive. A term is suggestive if some imagination, thought or perception is required to determine the nature of the goods from the term. A suggestive term differs from a descriptive term, which immediately tells something about the goods or services. In re Aid Laboratories, Inc., 223 USPQ 357 (TTAB 1984). A suggestive mark is registrable on the Principal Register. TMEP §1209.01(a). Considered as a whole, in connection with the goods, it does not take imagination for a prospective customer of the applicant's goods to conclude from the applicant's mark that the applicant's goods consist of an apparatus that features a platform and that is used in the treatment of osteoporosis.

Accordingly, for the reasons stated above, the refusal to register the applicant's mark under Section 2(e) (1) of the Trademark Act on the basis that the mark OSTEO PLATSORM is merely descriptive of the goods is made FINAL.

Supplemental Register Option Unavailable

Although an amendment to the Supplemental Register would normally be an appropriate response to this refusal, such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b), 15 U.S.C. §1051(b), and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been timely filed. 37 C.F.R. §2.47(d); TMEP §§815.02, 816.02 and 1102.03.

If applicant files an amendment to allege use and also amends to the Supplemental Register, please note that the effective filing date of the application will then be the date of filing of the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§206.01 and 816.02.

General Response Guidelines

If applicant fails to respond to this final action within six months of the mailing date, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final action by:

- (1) submitting a response that fully satisfies all outstanding requirements, if feasible (37 C.F.R. §2.64(a)); and/or
- (2) filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of \$100 per class (37 C.F.R. §§2.6(a)(18) and 2.64(a); TMEP §§715.01 and 1501 et seq.; TBMP Chapter 1200).

In certain circumstances, a petition to the Director may be filed to review a final action that is limited to procedural issues, pursuant to 37 C.F.R. §2.63(b)(2). 37 C.F.R. §2.64(a). See 37 C.F.R. §2.146(b), TMEP §1704, and TBMP Chapter 1201.05 for an explanation of petitionable matters. The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/Edward Fennessy/
Edward Fennessy
Trademark Examining Attorney
Law Office 114
1.571.272.8804

NOTICE OF NEW PROCEDURE FOR E-MAILED OFFICE ACTIONS: In late spring 2007, for any applicant who authorizes e-mail communication with the USPTO, the USPTO will no longer directly e-mail the actual Office action to the applicant. Instead, upon issuance of an Office action, the USPTO will e-mail the applicant a notice with a link/web address to access the Office action using Trademark Document Retrieval (TDR), which is located on the USPTO website at <http://portal.uspto.gov/external/portal/tow>. The Office action will not be attached to the e-mail notice. Upon receipt of the notice, the applicant can then view and print the actual Office action and any evidentiary attachments using the provided link/web address. TDR is available 24 hours a day, seven days a week, including holidays and weekends. This new process is intended to eliminate problems associated with e-mailed Office actions that contain numerous attachments.

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*, not the postmarked date.** To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Note:

In order to avoid size limitation constraints on large e-mail messages, this Office Action has been split into 4 smaller e-mail messages. The Office Action in its entirety consists of this message as well as the following attachments that you will receive in separate messages:

Email 1 includes the following 3 attachments

1. OsteoDef1
2. PlatformD1
3. AppSite1-1

Email 2 includes the following 6 attachments

1. AppSite1-2
2. AppSite1-3
3. AppSite1-4
4. AppSite1-5
5. App-Osteo1
6. OsteoDef2

Email 3 includes the following 6 attachments

1. AppProds1-1
2. AppProds1-2
3. Osteo2-1
4. Osteo2-2
5. Osteo2-3
6. Osteo2-4

Email 4 includes the following 3 attachments

1. OsteoLN1
2. OsteoLN2
3. OsteoLN3

Please ensure that you receive all of the aforementioned attachments, and if you do not, please contact the assigned-examining attorney.



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osteo-

• combining form of or relating to the bones: *osteoporosis*.

— ORIGIN from Greek *osteon* 'bone'.



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Compact Oxford English Dictionary



platform

• **noun** 1 a raised level surface on which people or things can stand. 2 a raised structure along the side of a railway track where passengers get on and off trains. 3 a raised structure standing in the sea from which oil or gas wells can be drilled. 4 the declared policy of a political party or group. 5 an opportunity for the expression or exchange of views. 6 a very thick sole on a shoe. 7 Computing a standard for the hardware of a computer system, which determines the kinds of software it can run.

— ORIGIN French *plateforme* 'ground plan', literally 'flat shape'.

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The Non-Drug Treatment for Osteoporosis

Frequently Asked Questions

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The following Frequently Asked Questions (FAQs) and answers can be helpful to better understand Osteoporosis, Dynamic Motion Therapy (DMT) and how the Juvent 1000 works. Please click on any question below and you will be taken to the answer.

- Is the Juvent 1000 Dynamic Motion Therapy (DMT) Platform easy to use?
- What does a treatment feel like on the Juvent 1000? Is it safe?
- Is the Juvent 1000 noisy?
- How does DMT work?
- Are there clinical studies and research to support that the Juvent 1000 not only stops osteoporosis but actually helps grow new bone?
- How does the cost of a Juvent 1000 compare to ongoing drug therapy for osteoporosis?
- What kind of support does Juvent offer for its product?
- Who Needs a Bone Mineral Density Test?
- Who is at risk for osteoporosis?
- Does DMT have any side effects?
- How do I purchase a Juvent 1000?
- Where can I get a demonstration of the Juvent 1000?
- Can I use the Juvent 1000 with osteoporosis drugs?
- What's the difference between Dynamic Motion Therapy (DMT) and whole body vibration (WBV)?
- Is the Juvent 1000 all I need to prevent or stop Osteoporosis?
- Why is the Juvent 1000 not available in the US?
- Does leaning on something during therapy affect the results?
- Is there a stand available for patients who cannot easily stand by themselves?
- Is the unit suitable for multi-users or is it only designed for home usage by one person?



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Q: Is the Juvent 1000 Dynamic Motion Therapy (DMT) Platform easy to use?

A: The Juvent 1000 is reasonably lightweight (20 lbs. / 9.6 kg) and portable. It can be used in the comfort of your home. You derive maximum therapeutic benefit simply by standing on the Juvent Platform in an upright relaxed stance (without footwear) for 20 minutes a day, five days a week. The medical device keeps track of your treatments for you.

[BACK TO QUESTIONS](#)

Q: What does a treatment feel like on the Juvent 1000? Is it safe?

A: The DMT vibrations are very gentle. The up and down movement is tiny – no bigger than the width of a few human hairs. Users report that the therapy is relaxing, makes them feel good and helps with postural stability. DMT is well within the safety limits set by the International Organization for Standards (ISO 2631/3).

[BACK TO QUESTIONS](#)

Q: Is the Juvent 1000 noisy?

A: No, quite the opposite. A treatment with the Juvent 1000 sounds like a gentle hum or buzz. It is so quiet that you can enjoy your treatment while reading, listening to the radio, watching television or talking on the phone!

[BACK TO QUESTIONS](#)

Q: How does DMT work?

A: Aging results in decreased bone mineral density and increased fracture risk. Type IIa muscle fiber activity also declines with age causing cardiovascular and postural stability changes which lead to falls and bone fractures. DMT restores type IIa activity with corresponding effects on bone formation, blood and lymph flow, and cardiovascular performance.

[BACK TO QUESTIONS](#)

Q: Are there clinical studies and research to support that the Juvent 1000 not only stops osteoporosis but actually helps grow new bone?

A: Clinical studies with the Juvent 1000 show an increase in bone mass averaging 2% per year in the spine and hip, the parts of the skeleton that experience the most stress and are most at risk of fracture due to bone loss. There are very promising ongoing clinical trials as well as over two decades of research that support the safety and efficacy of the Juvent 1000.

For more information, please visit the following pages:
[SCIENTIFIC SUMMARIES / REFERENCES](#)

[BACK TO QUESTIONS](#)

Q: How does the cost of a Juvent 1000 compare to ongoing drug therapy for osteoporosis?

A: The cost is less than chronic osteoporosis drug therapy. The durable Juvent Platform is designed to last a lifetime and can be used safely and effectively by all family members at risk of low bone density.

A: No side effects have been reported with the Juvent 1000. People using the Juvent 1000 experience positive effects during and after treatment. You should, however, always consult your doctor before undertaking any medical treatment. Contact your local Juvent representative and we'll send your doctor information on the Juvent 1000 so he/she can help you make the best decision.

Use of the Juvent 1000 is contraindicated for people with conditions in which an increase in fluid to the heart may be detrimental, which includes people with congestive heart failure.

➡ **BACK TO QUESTIONS**

Q: How do I purchase a Juvent 1000?

A: To purchase the Juvent 1000 DMT Platform, please call Medivibes, Ltd (+353 1) 832 4522 to place an order.

➡ **BACK TO QUESTIONS**

Q: Where can I get a demonstration of the Juvent 1000?

A: Contact Medivibes, Ltd. at (+353 1) 832 4522 to find out where and when you can see a demonstration of the Juvent 1000 DMT Platform.

➡ **BACK TO QUESTIONS**

Q: Can I use the Juvent 1000 with osteoporosis drugs?

A: There is no current published information on the interaction between the Juvent 1000 and osteoporosis drugs. Clinical studies are being planned which will compare the effect of DMT with various osteoporosis drugs. We recommend that you discuss this with your physician.

➡ **BACK TO QUESTIONS**

Q: What's the difference between Dynamic Motion Therapy (DMT) and whole body vibration (WBV)?

A: Juvent's research and Dynamic Motion Therapy technology does not have any relationship to the technology or claims made by whole body shaker/vibration machines currently being sold for exercise and physical training. While the Juvent 1000 delivers a very pure, low-level vertical movement to the skeleton, these other devices deliver a very forceful, sometimes violent shaking motion in all directions!

The acceleration magnitudes used in these devices, approximately 8.0g to as high as 22.0g, are well beyond the limits recommended for human tolerance by ISO 2631 and OSHA standards, and should be considered dangerous to use, especially for the elderly. These machines deliver 10 to 25 times greater amplitude than the Juvent 1000. There is limited evidence that these devices do anything for bone. In fact, many of the scientific studies and basic science data that are listed on their websites are actually studies performed by Juvent and research into its device.

➡ **BACK TO QUESTIONS**

Q: Is the Juvent 1000 all I need to prevent or stop Osteoporosis?

A: It is also important to maintain a balanced diet which includes vitamin D and calcium-rich

foods. Calcium is important in building and maintaining strong and healthy bones while vitamin D is necessary to help the body absorb calcium.

Exercise is also very important at any age. Since type IIa muscle fibers are lost with age and this leads to loss of balance and falls, decreased reflex time, hypotension, blurred vision, and an increased fracture rate, regular physical activity is recommended. Physical activity is the only single therapy that can simultaneously improve muscle mass, increase muscle strength, and improve balance and coordination. Most importantly, exercise will decrease the risk of fractures by reducing the risk of falls. Fall-risk reduction may be the biggest benefit of physical activity for the elderly population.

The Juvent 1000 is a great compliment to an existing exercise program and it provides a solution to those who are unable to exercise regularly. DMT restores Type IIa activity and increases bone mineral density which, in turn, will help improve postural stability.

➡ BACK TO QUESTIONS

Q: Why is the Juvent 1000 not available in the US?

A: Marketing and selling a medical device with medical claims in the US must go through a Food and Drug Administration (FDA) approval system which has to establish the device as both safe and effective. The FDA has decided that the Juvent medical device is safe and classified it as a non-significant risk device. Juvent has met with the FDA and will start a large clinical project in mid 2006. It is expected that this study will take a number of years to complete and receive approval.

➡ BACK TO QUESTIONS

Q: Does leaning on something during therapy affect the results?

A: Leaning on something--taking your weight or partial weight off your feet--can significantly reduce the efficacy of the Juvent technology. The microstrain that the body's skeleton is subject to and is required particularly in the spine to control bone mineral density, is greatly reduced when you lean on a railing or other support surface. Also, bending your knees during treatment has the same negative effect. For best results, stand in an upright relaxed stance in your stocking feet.

➡ BACK TO QUESTIONS

Q: Is there a stand available for patients who cannot easily stand by themselves?

A: Juvent is currently developing a sturdy, upright stand to ease the act of getting on and off the device, and keeping one stable during the 20 minute treatment time. This stand will be available in 2006.

➡ BACK TO QUESTIONS

Q: Is the unit suitable for multi-users or is it only designed for home usage by one person?


A: Although designed for one patient, the device is durable and rugged and will allow for up to 3 to 4 users on a daily basis and will still fall under the warranty.

➡ BACK TO QUESTIONS



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<http://www.iofbonehealth.org/>

IrishHealth.com:
<http://www.irishhealth.com/index.html?level=4&id=361&ss=osteoporosis>

NASA:
http://science.nasa.gov/headlines/y2001/ast02nov_1.htm

WebMD:
<http://my.webmd.com/content/article/1728.85890>

BBC News: http://news.bbc.co.uk/1/hi/english/sci/tech/newsid_1480000/1480925.stm

New Scientist:
<http://www.newscientist.com/news/news.jsp?id=ns99991132>

HealthScout:
<http://www.healthscout.com/template.asp?page=newsdetail&p=1&id=500902>

Osteoporotic Fracture Campaign (OFC):
<http://www.fragility.org/portal/>

Osteoporosis Prevention:
A Proactive Approach to Strong Bones & Good Health:
<http://www.avoidbone loss.com>

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

RESPONSE TO OFFICE ACTION # 1

Response to Office Action Form

To the Commissioner for Trademarks:

Application serial no. 78873139 has been amended as follows:

Argument(s)

In response to the substantive refusal(s), please note the following:

In response to the Office Action dated August 25, 2006, reconsideration and withdrawal of the refusal to register the above-identified mark is respectfully requested in view of the following remarks.

With respect to the Examining Attorney's refusal under §2(e)1 of the Trademark Act, the Examining Attorney has refused to register Applicant's mark on the grounds that the Applicant's mark OSTEO PLATFORM for the above-identified goods is merely descriptive of such goods. More specifically, the Examining Attorney stated the following [see page 2, paragraph 4]:

The term OSTEO is a prefix relating to osteoporosis. In relation to the goods, the term indicates that the therapeutic purpose for the goods relates to therapy for the prevention of osteoporosis. The term PLATFORM is defined as horizontal surface raised above the level of the adjacent area. In relation to the goods, the term indicates the nature of the goods as a platform or a medical apparatus consisting of a platform with vibration plates for therapeutic purposes in the field of osteoporosis. Thus the wording in the applicant's mark indicates the exact nature of the applicant's services.

It is respectfully submitted that the Applicant's mark is not merely descriptive but rather suggestive of the above-identified goods as evidenced by the numerous Federally Registered Trademarks presently employing the terms "OSTEO" and "PLATFORM" (or slight variations thereof) in a similar manner as the Applicant.

For example, all of the following trademarks have received Federal Registration:

Mark	Int. Class	Goods/Services
OSTEO FUSION	005	Calcium supplement
OSTEO EDGE	005	Nutritional supplements to increase bone density
OSTEO-AIDE	005	Calcium dietary supplement

OSTEO-SIZE	005	Nutritional supplements for bone and joint
OSTEO-SITE	010	Medical device, namely a bone biopsy needle
OSTEO-PIN	010	Bioresorbable pins used in dental procedures
OSTEO-TITE	010	Medical apparatus, namely bone screws
OSTEO PROTECT	005	Vitamins for strengthening bone and teeth
OSTEOGRAF	010	Bone grafting material
OSTEOTECH	010	Bone grafting material
OSTEOCURE	010	Bone growth stimulation device
OSTEO-MESH (cancelled)	010	Surgical mesh
OSTEO CARE	010	Bone growth stimulation device
OSTEOANALYZER (cancelled)	010	Scanners for detecting bone disorders

All of the above registered trademarks (including those cancelled which were once registered) use the terms "OSTEO" in connection with goods and services which are somewhat suggestive to the respective marks in a manner similar to the Applicant. For example, the mark OSTEOGRAF is used for bone grafting material. A graft refers to material affixed to other tissues or organs (see Exhibit A) and OSTEO is a prefix for osteoporosis as indicated in the office action and osteoporosis is a disease of bone in which the bone mineral density (BMD) is reduced (See Exhibit B). In another example, the mark OSTEO-PIN is used as bioresorbable pins for dental procedures, in other words, to be used on teeth/bone.

Since the PTO has already considered OSTEOGRAF registerable for bone grafting material and OSTEO-PIN registerable for bioresorbable pins for dental procedures, OSTEO PLATFORM should, likewise, be registerable for vibration plates used for therapeutic purposes. To deny registration to Applicant for a similar mark would simply frustrate the needs of the Applicant and fly in the face of precedent.

Furthermore, our search discovered that the Registered Trademarks listed above have been approved by the United States Patent and Trademark Office, without requiring evidence of secondary meaning. Such information has been deemed by the Courts to be powerful evidence that a mark is suggestive and not merely descriptive.

It is well established that when the PTO issues a certificate of registration, that registration provides the registrant with prima facie evidence of 1)

the validity of the mark and its registration, 2) the registrant's ownership, and 3) the registrant's "exclusive right" to use the mark on or in connection with the goods and services specified in the certificate of registration. Thus, with the certificate of registration, "the registrant obtains prima facie evidence that its mark is not generic in the eyes of the relevant public, see 15 U.S.C. § 1064(3), and that its mark is not 'merely' descriptive, but at a minimum is descriptive and has obtained secondary meaning, see 15 U.S.C. § 1052(e)." We have held that a district court should not freely substitute its opinion for that of the PTO because a decision to register a mark, without requiring evidence of secondary meaning, is powerful evidence that the registered mark is suggestive and not merely descriptive.....[t]he distinctiveness of a mark is measured in connection with the particular goods or services that are being offered" U.S. Search, LLC, v. US Search.com, Inc., 300 F.3d 517; 2002 U.S. App. LEXIS 16590; 63 U.S.P.Q.2d (BNA) 2013 (Fed. Cir. 2002)

As a result thereof, all of the above-identified marks have been deemed suggestive and not merely descriptive. It is therefore respectfully submitted that much like the marks cited above, in particular, OSTEOGRAF, and OSTEO-PIN, Applicant's mark OSTEO PLATFORM is suggestive, and not merely descriptive of Applicant's goods. For this reason alone, the refusal should be withdrawn.

However, another test of descriptive-suggestive connotations is to determine whether the word has a descriptive or suggestive significance as applied to merchandise, it is proper to take notice of the extent to which it has been used in trademarks by others on such merchandise (*Shoe Corp. of America v. Juvenile Shoe Corp.*, 266 F.2d 793, 121 U.S.P.Q. 510 (C.C.P.A. 1959). If it has been frequently so used, the inference is warranted that it is not purely distinctive, that it would be likely to be understood by purchasers as describing the merchandise itself, rather than the source hence having little or no trademark significance (*Id.*). Accordingly, a search for the term PLATFORM, in combination with other terms and/or slight variations thereof, on the U.S.P.T.O. website results in many marks comprising the term PLATFORM in connection with computer software goods registered on the Supplemental Register and not in connection with plates or surface raised above a level. Therefore, the term PLATFORM is descriptive as applied to merchandise relating to computer software goods. In one example, the mark VIRTUAL GRAPHICS PLATFORM is used for computer software platform (See attached). In another example, the mark CUSTOMER SERVICE PLATFORM is used for software in computer network management (see attached). Applicant respectfully submits that the proper test of descriptiveness of a word is its meaning to that class of buyers who are prospective purchasers, which may or may not be synonymous with its popular meaning (*Bada Co. v. Montgomery Ward & Co.*, 426

F.2d 8, 165 U.S.P.Q. 483 (9th Cir. 1970). Accordingly, if the meaning of the term PLATFORM creates a commercial impression in the minds of the class of buyers that the term is descriptive of computer software platforms then the term is distinctive with respect to the Applicant's goods. In other words, the term PLATFORM is not descriptive of vibration plates for therapeutic purposes but is suggestive of the goods and the refusal should be withdrawn.

Further support for the distinctiveness of the term PLATFORM in connection with the aforesaid goods, results from a search of the definition of the word "PLATFORM" on the Internet, specifically www.wikipedia.com and www.answers.com. The results of the search indicate a multitude of definitions for the term PLATFORM (see attached). Accordingly, Applicant respectfully submits that the commercial impression of the term "PLATFORM" would not automatically be one of a surface raised above a certain level. Moreover, the term PLATFORM as used in connection with the goods named herein, would require more imagination on the consumers part to get some more direct description of the product of the term, especially since the term PLATFORM is not descriptive of "vibration" plates. Therefore, Applicant respectfully submits that the term PLATFORM is at least suggestive of the goods and not merely descriptive thereof.

Further, Applicant respectfully submits that the mark is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods even if the mark comprises a combination of merely descriptive components. *See In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (C.C.P.A. 1968). In addition, under the anti-dissection rule, a composite mark is tested for its validity and distinctiveness by looking at it as a whole, rather than dissecting it into its component parts. As the U.S. Supreme Court stated: "the commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail (*Estate of P.D. Beckwith v. Commissioner of Patents*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920)). Even if the Examining Attorney believes the term OSTEO to be descriptive of the goods, the term in combination with PLATFORM, creates a unique, nondescriptive meaning as applied to the goods.

In view of the foregoing, it is respectfully submitted that the mark OSTEO PLATFORM is not merely descriptive, but rather suggestive of the goods recited above and it is believed that the

application is in condition for allowance and approval for publication. Should the Examining Attorney wish to discuss any of the above or any remaining issues directly, he is invited to contact Applicant's undersigned representative by telephone at (631)501-5700.

With respect to the Request for Information, Applicant respectfully submits the following answers to the questions asked in the office action:

1. Will the applicant's goods be used in the treatment of osteoporosis? The applicant's goods will be used for the treatment and prevention of osteoporosis as well as for addressing the entire musculoskeletal system in its approach to maintaining a mobile lifestyle for the aging population by maintaining muscle strength, function and balance.
2. What are the intended therapeutic purposes of the applicant's goods? The intended therapeutic purposes of the applicant's goods are as follows:
 - a. Prevent bone loss and improve bone density and strength
 - b. Restore the dynamic action of Type IIA (lower leg) muscle fibers
 - c. Stimulate blood and lymphatic flow from the lower limbs
 - d. Prevents and reverses the loss of bone due to osteoporosis
 - e. Reduces the possibility of spinal or hip fractures
 - f. Excellent option for those unable or unwilling to take osteoporosis medication
 - g. Noninvasive and less costly than chronic drug therapy
 - h. Gentle in its repetitive vertical movement
 - i. Convenient with only a required daily treatment of 20 minutes
 - j. Simple, mobile and safe to use in the privacy of your own home

In general, the applicant's goods enhances the musculoskeletal system in its mission to maintain mobility by maintaining muscle strength and balance.

3. Will the applicant's goods involve the use of a platform area on which users will stand? The applicant's goods do involve the use of a platform area on which the users stand.
4. The applicant should explain for the record how the applicant's goods function, namely, how the goods would be used. The applicant's goods provide very small vertical movements (vibrations or signals) are approximately 50 micrometers and move at a force of 0.3 g at 32-37 Hz. In other words, this indicates how many times per second the low magnitude force is delivered at 32-37 times per second. This repetition rate is automatically varied to correspond to an individual's body mass. The goods are user friendly for use in the home that delivers a daily 20-minute treatment. The medical device does not use any motors, cams, or eccentric weights. The medical device does utilize a patented single spring, unique four-point suspension system that stabilizes

the action of the device while offering a significant mechanical advantage. These features allow the medical device to be in mechanical resonance with the body mass of the person being treated. It also only requires approximately 10 watts, or less than the power of a nightlight, to operate.

5. The applicant should explain for the record the intended consumers who will use the applicant's goods. Applicant's goods are intended for use by those suffering from bone loss and muscle mass. Applicant's goods will also be used by astronauts to help prevent the bone loss they experience in zero-gravity (weightlessness) conditions. The consumer or a health professional may purchase the device.

Evidence

Evidence in the nature of copies of various registered marks from the U.S.P.T.O website using the terms OSTEO and PLATFORM; definitions from two sources of the word PLATFORM has been attached.

- Evidence-1 [evi_16720620620-135631944_._evidence_Page_01.jpg]
 - Evidence-2 [evi_16720620620-135631944_._evidence_Page_02.jpg]
 - Evidence-3 [evi_16720620620-135631944_._evidence_Page_03.jpg]
 - Evidence-4 [evi_16720620620-135631944_._evidence_Page_04.jpg]
 - Evidence-5 [evi_16720620620-135631944_._evidence_Page_05.jpg]
 - Evidence-6 [evi_16720620620-135631944_._evidence_Page_06.jpg]
 - Evidence-7 [evi_16720620620-135631944_._evidence_Page_07.jpg]
 - Evidence-8 [evi_16720620620-135631944_._evidence_Page_08.jpg]
 - Evidence-9 [evi_16720620620-135631944_._evidence_Page_09.jpg]
 - Evidence-10 [evi_16720620620-135631944_._evidence_Page_10.jpg]
 - Evidence-11 [evi_16720620620-135631944_._evidence_Page_11.jpg]
 - Evidence-12 [evi_16720620620-135631944_._evidence_Page_12.jpg]
 - Evidence-13 [evi_16720620620-135631944_._evidence_Page_13.jpg]
 - Evidence-14 [evi_16720620620-135631944_._evidence_Page_14.jpg]
 - Evidence-15 [evi_16720620620-135631944_._evidence_Page_15.jpg]
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 - Evidence-17 [evi_16720620620-135631944_._evidence_Page_17.jpg]
 - Evidence-18 [evi_16720620620-135631944_._evidence_Page_18.jpg]
 - Evidence-19 [evi_16720620620-135631944_._evidence_Page_19.jpg]
 - Evidence-20 [evi_1-16720620620-135631944_._evidence_Page_20.jpg]
 - Evidence-21 [evi_16720620620-135631944_._evidence_Page_21.jpg]
 - Evidence-22 [evi_16720620620-135631944_._evidence_Page_22.jpg]
 - Evidence-23 [evi_16720620620-135631944_._evidence_Page_23.jpg]
 - Evidence-24 [evi_16720620620-135631944_._evidence_Page_24.jpg]
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 - Evidence-27 [evi_16720620620-135631944_._evidence_Page_27.jpg]
 - Evidence-28 [evi_16720620620-135631944_._evidence_Page_28.jpg]
 - Evidence-29 [evi_16720620620-135631944_._evidence_Page_29.jpg]
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Electronic Signature

The form will not be "signed" in the sense of a traditional paper document. To verify the contents of the application, the signatory must enter any alpha/numeric character(s) or combination thereof of his or her choosing, preceded and followed by the forward slash (/) symbol. The USPTO does **not** determine or pre-approve what the entry should be, but simply presumes that this specific entry has been adopted to serve the function of the signature. Most signatories simply enter their names between the two forward slashes, although acceptable "signatures" could include /john doe/; /jd/; or /123-4567/.

Response Signature

Signature:

/David M. Carter/

Date Signed: 02/22/2007

MM/DD/YYYY

Signatory's Name

David. M. Carter

Signatory's Position

Attorney for Applicants

SIGN IT

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OSTEO FUSION

Word Mark OSTEO FUSION

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Nutritional and dietary supplement; namely, liquid calcium supplement. FIRST USE: 20050913. FIRST USE IN COMMERCE: 20050913

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Design Search Code

Serial Number 78607686

Filing Date April 13, 2005

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition January 10, 2006

Registration Number 3197532

Registration Date January 9, 2007

Owner (REGISTRANT) Nature's Sunshine Products, Inc. CORPORATION UTAH 75 East 1700 South Provo UTAH 84605

Attorney of Record Michael E. Mangelson, Esq.

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OSTEO" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	OSTEO-EDGE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary supplements, namely, nutritional supplements for increasing bone density, joint flexibility, treatment of calcium and other mineral loss and general bone strength. FIRST USE: 20010200. FIRST USE IN COMMERCE: 20010200
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	78054562
Filing Date	March 22, 2001
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	January 15, 2002
Registration Number	2716560
Registration Date	May 13, 2003
Owner	(REGISTRANT) NuTru, Inc. CORPORATION ILLINOIS 6865 N. Lincoln Avenue Lincolnwood ILLINOIS 60646
Attorney of Record	Andrew P. Soderna
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark	OSTEO-AIDE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: DIETARY SUPPLEMENT CONTAINING CALCIUM SALT. FIRST USE: 20030315. FIRST USE IN COMMERCE: 20030315
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76385521
Filing Date	March 18, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 31, 2002
Registration Number	2762662
Registration Date	September 9, 2003
Owner	(REGISTRANT) Jointhealth.org, Inc. CORPORATION INDIANA 300 W. Jennings #102B Newburgh INDIANA 47630
Attorney of Record	Nick Cirignano
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	OSTEO-SIZE
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: DIETARY NUTRITIONAL SUPPLEMENT CONTAINING CALCIUM, GLUCOSAMINE AND CHONDROITON FOR BONE AND JOINT SUPPORT. FIRST USE: 20010315. FIRST USE IN COMMERCE: 20010616
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	76277769
Filing Date	June 25, 2001
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 9, 2002
Registration Number	2588169
Registration Date	July 2, 2002
Owner	(REGISTRANT) PROGRESSIVE LABORATORIES, INC. CORPORATION TEXAS 1701 WEST WALNUT HILL LANE IRVING TEXAS 750387962
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark OSTEO-SITE
Goods and IC 010. US 026 039 044. G & S: Medical device, namely, a bone biopsy/infusion needle. FIRST
Services USE: 20000103. FIRST USE IN COMMERCE: 20000103
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 75826952
Filing Date October 19, 1999
Current Filing
Basis 1A
Original Filing
Basis 1B
Published for
Opposition June 13, 2000
Registration
Number 2450167
Registration Date May 8, 2001
Owner (REGISTRANT) Cook Incorporated CORPORATION INDIANA P.O. Box 489 Bloomington
 INDIANA 47402
Attorney of Record C. David Emhardt
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	OSTEO-PIN
Goods and Services	IC 010. US 026 039 044. G & S: bioresorbable pins used in dental, orthodontic, periodontic and oral surgery and procedures. FIRST USE: 20000302. FIRST USE IN COMMERCE: 20000302
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75534736
Filing Date	August 11, 1998
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	August 10, 1999
Registration Number	2621670
Registration Date	September 17, 2002
Owner	(REGISTRANT) Luitpold Pharmaceuticals, Inc. CORPORATION NEW YORK One Luitpold Drive Shirley NEW YORK 11967
Attorney of Record	PETER S REICHERTZ
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark	OSTEO-TITE
Goods and Services	IC 010. US 026 039 044. G & S: MEDICAL APPARATUS, NAMELY COATED BONE SCREWS. FIRST USE: 19980500. FIRST USE IN COMMERCE: 19980500
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75430442
Filing Date	February 6, 1998
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 8, 1998
Registration Number	2269876
Registration Date	August 10, 1999
Owner	(REGISTRANT) AMEI TECHNOLOGIES INC. CORPORATION DELAWARE 1105 North Market Street, Suite 1300 Wilmington DELAWARE 19899
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	S. Roxanne Edwards
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE



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Typed Drawing

Word Mark OSTEO PROTECT

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: vitamin preparations; namely, a vitamin and mineral preparation for strengthening bone and teeth, sold through a mail-order operation and retail stores having common ownership with applicant. FIRST USE: 19950402. FIRST USE IN COMMERCE: 19950402

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75196593

Filing Date November 12, 1996

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition May 7, 2002

Registration Number 2599865

Registration Date July 30, 2002

Owner (REGISTRANT) GEORGIA BARIATRICS, P.C. CORPORATION GEORGIA 2904 MACON ROAD COLUMBUS GEORGIA 31906

Attorney of Record LAURENCE P COLTON

Type of Mark TRADEMARK

Register PRINCIPAL

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Typed Drawing

Word Mark	OSTEOGRAF
Goods and Services	IC 010. US 044. G & S: SYRINGES AND HYDROXYLAPATITE NON-RESORBABLE BONE GRAFTING MATERIAL FOR AVEOLAR RIDGE AUGMENTATION. FIRST USE: 19850912. FIRST USE IN COMMERCE: 19850912
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73567502
Filing Date	November 8, 1985
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	May 27, 1986
Registration Number	1405669
Registration Date	August 19, 1986
Owner	(REGISTRANT) COORS BIOMEDICAL COMPANY CORPORATION DELAWARE SUITE 210 12860 W. CEDAR DRIVE LAKEWOOD COLORADO 80228 (LAST LISTED OWNER) CERAMED DENTAL, L.L.C. LTD LIAB CO DELAWARE 12860 WEST CEDAR DRIVE LAKEWOOD COLORADO 80228
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	JAMES B. BIERBER

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20061124.
Renewal 1ST RENEWAL 20061124
Live/Dead
Indicator LIVE

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OSTEOTECH

Word Mark
Goods and
Services

OSTEOTECH

(CANCELLED) IC 010. US 026 039 044. G & S: [SURGICAL KITS CONSISTING PRIMARILY OF SURGICAL GOWNS, SPONGES, DRAPES, TRAYS, TAPE, GLOVES AND INSTRUMENTS FOR USE IN SURGICAL ROOMS DURING SURGICAL PROCEDURES]. FIRST USE: 19871230. FIRST USE IN COMMERCE: 19871230

IC 005. US 018 044. G & S: ALLOGRAFT MATERIAL, NAMELY HUMAN BONE AND RELATED TISSUE FOR USE IN GRAFTS AND TRANSPLANTS; AND ALLOGRAFT TISSUE RECONSTITUTION SOLUTIONS. FIRST USE: 19861117. FIRST USE IN COMMERCE: 19861117

Mark Drawing
Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Design Search
Code

Serial Number 73795614

Filing Date April 24, 1989

Current Filing
Basis 1A

Original Filing
Basis 1A

Published for
Opposition February 6, 1990

Change In
Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 1593781
Registration Date May 1, 1990
Owner (REGISTRANT) OSTEOTECH, INC. CORPORATION DELAWARE 1151E SHREWSBURY AVENUE SHREWSBURY NEW JERSEY 07701
Attorney of Record Lisa A. Osman
Prior Registrations 1448120;1546270
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. PARTIAL SECT 8 (6-YR). SECTION 8(10-YR) 20000719.
Renewal 1ST RENEWAL 20000719
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark OSTEOCURE
Goods and IC 010. US 044. G & S: BONE GROWTH STIMULATION DEVICE. FIRST USE: 19880505.
Services FIRST USE IN COMMERCE: 19880505
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 73770681
Filing Date December 21, 1988
Current Filing Basis 1A
Original Filing
Basis 1A
Published for
Opposition July 4, 1989
Registration
Number 1557819
Registration Date September 26, 1989
Owner (REGISTRANT) OSTEO-DYNE, INC. CORPORATION NORTH CAROLINA 4420
 DARBENTRY COURT CHARLOTTE NORTH CAROLINA 28226
Assignment
Recorded ASSIGNMENT RECORDED
Attorney of Record KATHLEEN S. TAYLOR
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	OSTEO-MESH
Goods and Services	(CANCELLED) IC 010. US 044. G & S: SURGICAL MANDIBULAR MESH PROSTHESIS - NAMELY, A MANDIBULAR TRAY AND SURGICAL IMPLANT - NAMELY, CRANIAL FAIRING. FIRST USE: 19821216. FIRST USE IN COMMERCE: 19821216
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	73835747
Filing Date	November 3, 1989
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 3, 1990
Registration Number	1603581
Registration Date	June 26, 1990
Owner	(REGISTRANT) XOMED, INC. CORPORATION DELAWARE 6743 SOUTHPOINT DRIVE NORTH JACKSONVILLE FLORIDA 32216
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	STEPHEN CHESNOFF
Prior Registrations	1468753
Type of Mark Register	TRADEMARK PRINCIPAL

Live/Dead
Indicator DEAD

Cancellation
Date December 30, 1996

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Typed Drawing

Word Mark OSTEOCARE
Goods and IC 010. US 044. G & S: BONE GROWTH STIMULATION DEVICE. FIRST USE: 19880303.
Services FIRST USE IN COMMERCE: 19880303
Mark Drawing Code (1) TYPED DRAWING
Design Search
Code
Serial Number 73770692
Filing Date December 21, 1988
Current Filing Basis 1A
Original Filing
Basis 1A
Published for
Opposition June 27, 1989
Registration
Number 1556682
Registration Date September 19, 1989
Owner (REGISTRANT) OSTEO-DYNE, INC. CORPORATION NORTH CAROLINA 4420
 DARBENTRY COURT CHARLOTTE NORTH CAROLINA 28226
Assignment
Recorded ASSIGNMENT RECORDED
Attorney of Record KATHLEEN S. TAYLOR
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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OsteoAnalyzer

Word Mark

OSTEOANALYZER

Goods and Services

(CANCELLED) IC 010. US 044. G & S: DIAGNOSTIC RECTILINEAR SCANNERS FOR USE ON PATIENTS IN DETECTING BONE DISORDERS. FIRST USE: 19850307. FIRST USE IN COMMERCE: 19850307

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Design Search Code

Serial Number 73537742

Filing Date May 15, 1985

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition February 25, 1986

Registration Number 1419070

Registration Date December 2, 1986

Owner (REGISTRANT) OSTEON, INC. CORPORATION HAWAII STE. 102, P.O. BOX 430 649 CALIFORNIA AVE. WAHIAWA HAWAII 96786

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NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ANALYZER" APART FROM THE

MARK AS SHOWN

Description of Mark THE INITIAL LETTER "O" OF "OSTEOANALYZER" IS INTENDED TO REPRESENT THE CROSS SECTIONAL VIEW OF THE CORTICAL BONE IN THE RADIUS. THE OUTER "O" REPRESENTS THE OUTER EDGE OF THE BONE, AND THE INNER FIGURE REPRESENTS THE INNER EDGE OF THE CORTEX.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date June 7, 1993

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Platform

From Wikipedia, the free encyclopedia

The word **platform** is used in several different contexts, usually referring to some kind of standing surface used to support things, give them stability, or visibility:

- Railway platform, an area at a train station to alight from/embark on trains or trams.
- Political platform, a list of principles held by a political party to appeal to the public.
 - Platformism, in anarchist politics, refers to organising in the tradition of Nestor Makhno's Organizational Platform of the Libertarian Communists.
- Platform (Scottish politics), an openly organized faction within a Scottish left-wing political party
- Platform (computing), in computing and technology, refers to a framework on which applications may be run.
- Platform (military), in military technology, refers to a capability for military action, for example, a military ship, aircraft, headquarters or even the human individual.
- Platform cover, in geology, refers to the sedimentary deposits that lie on top of the craton's platform.
- Platform game, a genre of video games characterized by the player having to jump platforms
- Platform (geology), the part of a continental craton that is covered by sedimentary rocks.
- Oil platform, a structure built for oil production
- Automobile platform, a set of components shared by several vehicle models
- Platform shoe, a kind of shoe with a thick sole
- Continental platform, in geology, the low depth sea area next to the continent
- Platform, in the swimming pool context, a flat surface, usually made of cement, and typically 3, 5, 7.5, or 10 meters above the water surface, from which bathers jump into the baths located below the platform.
- Jumping platform, naturally occurring platforms, or platforms made in an ad-hoc way for cliff jumping
- *Platform* (film), a 2000 film by Zhang Ke Jia
- *Platform* (novel), a 2001 novel by Michel Houellebecq
- Software development platform such as Mono development platform

Retrieved from "<http://en.wikipedia.org/wiki/Platform>"

Category: Disambiguation

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platform

Dictionary ↕



plat·form (plăt'fôrm')

n.

- a. A horizontal surface raised above the level of the adjacent area, as a stage for public speaking or a landing alongside railroad tracks.
- b. A vessel, such as a submarine or an aircraft carrier, from which weapons can be deployed.
- c. An oil platform.
2. A place, means, or opportunity for public expression of opinion: *a journal that served as a platform for radical views.*
3. A vestibule at the end of a railway car.
4. A formal declaration of the principles on which a group, such as a political party, makes its appeal to the public.
5.
 - a. A thick layer, as of leather or cork, between the inner and outer soles of a shoe, giving added height.
 - b. A shoe having such a construction.
6. *Computer Science.* The basic technology of a computer system's hardware and software that defines how a computer is operated and determines what other kinds of software can be used.
7. *Geology.*
 - a. A flat elevated portion of ground.
 - b. The ancient, stable, interior layer of a continental craton composed of igneous or metamorphic rocks covered by a thin layer of sedimentary rock.

[French plate-forme, diagram, from Old French : plat, flat; see plate + forme, form (from Latin fôrma).]

↕ *more articles below...*

Technology ↕



platform

A hardware and/or software architecture. The term originally dealt with only hardware, and it is still used to refer to a CPU model or computer family. For example, the x86 PC is the world's largest hardware platform. IBM's iSeries (AS/400) and Sun's SPARC are also examples of hardware platforms (see hardware platforms).

Hardware and Software

Very often, the term refers to an operating system, and the hardware is implied. For example, when an application is said to "run on the Windows platform," it means that the program has been compiled into the x86 machine language and runs under Windows. It implies x86 because Windows runs mostly on x86 PCs.

The term may also refer to other than desktop and laptop computers. For example, the Xbox and Playstation are gaming platforms, and Palm and Windows CE are PDA platforms.

The Hardware May Not Be Implied

Since a variation of Unix runs on many hardware platforms, the phrase "the program runs on the Unix platform" is imprecise. It generally means that the application runs on the most popular Unix workstations or servers, but you would have to find out which ones to be sure (see Unix).

Software Only

Platform also refers to software-only environments. For example, a messaging platform or groupware platform implies one or more programming interfaces that e-mail, calendaring and other client programs are written to in order to communicate with the services provided by the server.

The terms "platform" and "environment" are often used interchangeably. See environment.

- Find the latest news, features and reviews relating to "platform" from CMP's TechSearch.

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Business Terms ↗

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Platform

The standards that set the parameters for what a system can and cannot do; generally refers to the microprocessor and/or the operating system. The term cross-platform refers to applications, formats, or devices that work on different platforms.

Thesaurus ↗

H
OUGHT
MIFFLIN
COMPAN

platform

noun

A temporary framework with a floor, used by workmen: scaffold, scaffolding, stage. See machine.

Politics ↗

H
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MIFFLIN
COMPAN

platform

A political party's or candidate's written statement of principles and plans. A platform is usually developed by a committee at the party convention during a presidential campaign.

Word Tutor ↗

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platform 🔊

IN BRIEF: A flat surface or stage higher than the ground or floor around it. Also: A publicly announced set of goals and principles; policy.

are the Java ME. Some phones, even without a full fledged OS, enable Java programs such as games to operate. Java and the bytecode are said to be platform independent. But this is because Java is the platform as well as a programming language. Software really cannot operate without a platform or be platform independent. The programming language is referred to here, meaning, the programmer need not be concerned about the platform, nor will the language change with a different platform.

.NET

Main article: .NET

.NET is Microsoft's answer to Sun's Java.

Role in software

A platform is a crucial element in software development. A platform might be simply defined as 'a place to launch software'. Platforms are frequently mentioned with APIs. A complete suite of APIs constitute another type of platform. Platforms frequently are referred to as operating systems as defined above. However they are not always the same thing. For example, 2 other popular non-OS platforms are Java, as mentioned above, and BREW for mobile phones.

Hardware examples

- Supercomputer architectures.
- DEC Alpha cluster running under OpenVMS.
- RISC processor based machines running UNIX variants (for example, Sun computers running the Solaris operating system).
- Macintosh, custom Apple Computer hardware and Mac OS operating system (now migrated on x86).
- Commodity computer platforms, such as
 - WIN32 (Wintel), that is, Intel x86 or compatible hardware and Windows operating system.
 - Lintel, that is, Intel x86 or compatible hardware and the Linux operating system.
 - x86 with other UNIX variants such as BSD variants.
- Old home computer microcomputers.
- Gumstix full function miniature computers and Linux
- A mainframe with its custom operating system, say an IBM System/360.
- Any variety of video game console.

Phone platforms

- BREW
- Helix
- Java ME
- Palm OS
- Qtopia
- S60 platform
- UIQ
- Symbian OS
- Windows Mobile
- Linux

See also

- [Category:Computing platforms](#)
- [Computing](#)
- [Software engineering and List of software engineering topics](#)
- [Operating Systems](#)
- [Application Programming Interface](#)

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Translations



Translations for: Platform

Dansk (Danish)

n. - perron, tribune, mølleomgang, partiprogram

Nederlands (Dutch)

podium, natuurlijke/ kunstmatige verhoging, perron, plan/ontwerp, booreiland, (hoofdpunt van) politiek platform, gelegenheid om iets te verkondigen, balkon van bus/tram etc., (mv) schoenen met plateazolen

Français (French)

n. - estrade, tribune, plate-forme, (gén) plateau (pour véhicules), (Pol) plate-forme électorale, (Rail) quai, (fig) tremplin

Deutsch (German)

n. - Bahnsteig, Podium, Bühne, Plateausohle, Plattform

Ελληνική (Greek)

n. - εξέδρα, βήμα, αποβάθρα, πλατφόρμα, πολιτικό πρόγραμμα (κόμματος), ιδεολογική πλατφόρμα

Italiano (Italian)

cattedra, marciapiede, podio, piattaforma, passerella

Português (Portuguese)

n. - plataforma (f)

Русский (Russian)

платформа, перрон, помост, позиция, (политическая) программа

Español (Spanish)

n. - plataforma, tribuna, andén, estrado, tablado, tarima, pasarela, andamio

Svenska (Swedish)

n. - estrad, podium, plattform, perrong, plåtå, (parti)program

中文 (简体) (Chinese (Simplified))

月台, 坛, 讲台

中文 (繁體) (Chinese (Traditional))

n. - 月臺, 壇, 講臺

한국어 (Korean)

n. - 승강장, 대지, 강령

日本語 (Japanese)

n. - 壇, 演壇, プラットホーム, 網領, 乗降口

العربية (Arabic)

(الاسم) خطه, برنامج, البرنامج السياسي, منصه, منبر, رصيف في محطة السكه الحديدية, منبسط الدرج أو سلم المبنى

עברית (Hebrew)

n. - רחבה, רציף, בימה, סוליה עבה, מישורת, מצע מפלגתי, פלטפורמה

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E-mail: intreg.mail@wipo.int Internet: <http://www.wipo.int>



JAN 23 2007

**Madrid Agreement
and
Madrid Protocol**

PMC

By registered mail

David M. Carter
Carter, DeLuca, Farrell &
Schmidt, LLP
445 Broad Hollow Rd.
Suite 225
Melville, NY 11747
United States of America

Our reference: 861/370132901

1429-53 MEP

Geneva, 15/01/2007

Re: Statement of Grant of Protection
International registration No. 905684 (OSTEO PLATFORM)

Madam,
Sir,

Please find enclosed a statement of grant of protection for the above-mentioned international registration, issued by the Office of European Community, in accordance with Rule 17(6) (a) (ii) of the Common Regulations under the Madrid Agreement and the Protocol Relating to that Agreement.

International Bureau of the World Intellectual
Property Organization (WIPO)



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Trade Marks Department

W124

First Statement of Grant of Protection pursuant to Rule 17(6)(a)(ii) of the Common Regulations under the Madrid Agreement and Protocol, and Rule 112(5) of the Regulation implementing the Community Trade Mark Regulation

Alicante, 11/01/2007

<i>International registration number:</i>	0905684
<i>Date of notification to OHIM:</i>	14-12-2006
<i>Name of the Holder:</i>	Juvent, Inc.
<i>Trade Mark:</i>	OSTEO PLATFORM

The examination of the above-mentioned mark has been completed and no absolute grounds objections have been raised.

However, the mark is still open to opposition until 18-09-2007 or to observations by third parties.

PAREJA TORRES, Ana María
Examiner

EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

OFFICE ACTION # 1

Jennifer Vitale

From: ECom114 [Ecom1143@USPTO.GOV]
Sent: Friday, August 25, 2006 3:29 PM
To: Jennifer Vitale
Subject: TRADEMARK APPLICATION NO. 78873139 - OSTEO PLATFORM - 1429-53
Attachments: platform.jpg

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/873139

APPLICANT: Juvent, Inc.

CORRESPONDENT ADDRESS:

DAVID M. CARTER
CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 BROADHOLLOW RD STE 225
MELVILLE, NY 11747-3615

78873139

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: OSTEO PLATFORM

CORRESPONDENT'S REFERENCE/DOCKET NO: 1429-53

CORRESPONDENT EMAIL ADDRESS:

docket@cdfslaw.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/873139

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

Descriptiveness Refusal

8/25/2006

Registration is refused because the proposed mark merely describes a characteristic, feature of function of applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods and/or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). A mark that describes an intended user of a product or service is also merely descriptive within the meaning of Section 2(e)(1). *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984); *In re Gentex Corp.*, 151 USPQ 435 (TTAB 1966).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999) (Board found that DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT PC-DOS found merely descriptive of "computer programs recorded on disk;" it is unnecessary that programs actually run "concurrently," as long as relevant trade clearly uses the denomination "concurrent" as a descriptor of this particular type of operating system); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985) ("Whether consumers could guess what the product is from consideration of the mark alone is not the test"); TMEP §1209.01(b).

The applicant's mark is OSTEOPOROSIS PLATFORM for medical apparatus, namely, vibration plates for therapeutic purposes. The term OSTEO is a prefix relating to osteoporosis. See attached definition from *The American Heritage Dictionary of the English Language*, Third Edition, 1992. In relation to the goods, the term indicates that the therapeutic purpose for the goods relates to therapy for the prevention of osteoporosis. The term PLATFORM is defined as horizontal surface raised above the level of the adjacent area. See attached definition from *The American Heritage Dictionary of the English Language*, Third Edition, 1992. In relation to the goods, the term indicates the nature of the goods as a platform or a medical apparatus consisting of a platform with vibration plates for therapeutic purposes in the field of osteoporosis. Thus, the wording in the applicant's mark indicates the exact nature of the applicant's services.

In addition, the examining attorney attaches a webpage regarding a product made by the applicant, namely, the Dynamic Motion Therapy Platform. See attached webpage, namely, <http://64.233.161.104/search?q=cache:JipFjIVAoC0J:www.juvent.com/+%22juvent%22+%22platform:&hl=en&gl=us&ct=clnk&cd=2>. The webpage evidences that the applicant's product line includes platforms which are for use in connection with the treatment of osteoporosis. The product as pictured features a platform which vibrates. In addition, the materials indicate that the platform is for use in the treatment of osteoporosis. The webpage is further evidence of the descriptive nature of the wording in the mark as used in connection with medical apparatuses, namely, vibration plates for therapeutic purposes.

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Supplemental Register

Although an amendment to the Supplemental Register would normally be an appropriate response to this refusal(s), such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b), 15 U.S.C. §1051(b), and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been timely filed. 37 C.F.R. §2.47(d); TMEP §§815.02, 816.02 and 1102.03.

If applicant files an amendment to allege use and also amends to the Supplemental Register, please note that the effective filing date of the application will then be the date of filing of the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§206.01 and 816.02.

Request for Information

The applicant's goods are technical in nature. Therefore, the applicant must provide the information requested below pursuant to the authority granted the examining attorney by 37 C.F.R. §2.61(b). The applicant must *directly* answer the following question(s):

1. Will the applicant's goods be used in the treatment of osteoporosis?
2. What are the intended therapeutic purposes of the applicant's goods?
3. Will the applicant's goods involve the use of a platform area on which users will stand?
4. The applicant should explain for the record how the applicant's goods function, namely, how the goods would be used.
5. The applicant should explain for the record the intended consumers who will use the applicant's goods.

In order that the examining attorney to discern the answers to these questions, the applicant should answer the questions in sequential order in a clear and concise manner.

Please note that failure to comply with a request pursuant to 37 C.F.R. §2.61(b) is an independent basis for refusal and may result in the refusal of the entire application. *In re DTI Partnership, L.L.P.*, Serial No. 76/197,868, slip op. (TTAB 2003); *In re SPX Corporation*, 63 USPQ2d 1592 (TTAB 2002); *In re Babies Beat, Inc.*, 13 USPQ2d 1729 (TTAB 1990).

Please note that the same type of notice and explanation should be given when requesting *any* information from an applicant, e.g., promotional materials, patent applications, etc.

Moreover, the examining attorney should repeatedly warn the applicant of the consequences for failing to comply with the request for information pursuant to 37 C.F.R. §2.61(b) in any subsequent action. The use of the notice, explanation, and repeated warning should ensure that your information request will receive strict enforcement by the TTAB.

If the applicant makes a good faith attempt to directly respond to the information request, the examining attorney should not make the requirement final. If the applicant argues that the request is not reasonably necessary, the examining attorney may make the request for information final, assuming that the request for information clearly aids the examining attorney in the examination of the application.

Search of Office Records

The Office records have been searched and no similar registered or pending mark has been found that

would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

/Brendan D. McCauley/
Brendan D. McCauley
Law Office 114
571-272-9459

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office**, not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

osteo-

osteo- or **oste-** *prefix*
Bone: *osteoarthritis*.

[Greek, from *osteon*, bone.][1]

plat·form

plat·form (plăt'fôrm') *noun*

Abbr. plat.

1. a. A horizontal surface raised above the level of the adjacent area, as a stage for public speaking or a landing alongside railroad tracks. b. A vessel, such as a submarine or an aircraft carrier, from which weapons can be deployed. c. An oil platform.
2. A place, a means, or an opportunity for public expression of opinion: *a journal that served as a platform for radical views*.
3. A vestibule at the end of a railway car.
4. A formal declaration of the principles on which a group, such as a political party, makes its appeal to the public.
5. a. A thick layer, as of leather or cork, between the inner and outer soles of a shoe, giving added height. b. A shoe having such a construction.

[French *plate-forme*, diagram, from Old French : *plat*, flat. See plate + *forme*, form (from Latin *forma*).][2]

[1] *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

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EX PARTE APPEAL BRIEF

In Re: Application of: Juvent, Inc.

Application Serial No. 78/873,139

Filed: May 1, 2006

Trademark: OSTEOPATHY

APPLICATION AS FILED

Trademark/Service Mark Application, Principal Register

Serial Number: 78873139

Filing Date: 05/01/2006

The table below presents the data as entered.

MARK SECTION	
MARK	OSTEO PLATFORM
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	OSTEO PLATFORM
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Juvent, Inc.
INTERNAL ADDRESS	Second Floor
STREET	300 Atrium Drive
CITY	Somerset
STATE	New Jersey
ZIP/POSTAL CODE	08873
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Delaware
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	010
DESCRIPTION	MEDICAL APPARATUS, NAMELY, VIBRATION PLATES FOR THERAPEUTIC PURPOSES
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/David M. Carter/
SIGNATORY NAME	David M. Carter
SIGNATORY DATE	04/28/2006
SIGNATORY POSITION	Attorney for Applicant(s)

PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	David M. Carter
FIRM NAME	Carter, DeLuca, Farrell & Schmidt, LLP
INTERNAL ADDRESS	Suite 225
STREET	445 Broad Hollow Rd.
CITY	Melville
STATE	New York
ZIP/POSTAL CODE	11747
COUNTRY	United States
PHONE	631-501-5700
FAX	631-501-3526
EMAIL	docket@cdfslaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	1429-53
OTHER APPOINTED ATTORNEY(S)	Peter DeLuca, Raymond E. Farrell, Joseph Schmidt, Edward C. Meagher, Christopher Trainor, George Likourezos, Jeffrey Steen, Michael Brew, Dana Brussel, Frank Sardone, Bernadette Bennett, Thomas Rosselli, J.P. Cass, Pina M. Gulla, Michael Krenicky, Mark Whittenberger, James Wiltzius
CORRESPONDENCE SECTION	
NAME	David M. Carter
FIRM NAME	Carter, DeLuca, Farrell & Schmidt, LLP
INTERNAL ADDRESS	Suite 225
STREET	445 Broad Hollow Rd.
CITY	Melville
STATE	New York
ZIP/POSTAL CODE	11747
COUNTRY	United States
PHONE	631-501-5700
FAX	631-501-3526
EMAIL	docket@cdfslaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes

FILING INFORMATION	
SUBMIT DATE	Mon May 01 10:26:55 EDT 2006
TEAS STAMP	USPTO/BAS-712515104-20060 501102655683112-78873139- 200f0ae68b3d87dbdc07acc7 2f1e3991f-CC-1325-2006042 8153233968168

PTO Form 1478 (Rev 6/2005)
OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78873139

Filing Date: 05/01/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of OSTEO PLATFORM.

The applicant, Juvent, Inc., a corporation of Delaware, residing at Second Floor, 300 Atrium Drive, Somerset, New Jersey, United States, 08873, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 010: MEDICAL APPARATUS, NAMELY, VIBRATION PLATES FOR THERAPEUTIC PURPOSES

The applicant hereby appoints David M. Carter and Peter DeLuca, Raymond E. Farrell, Joseph Schmidt, Edward C. Meagher, Christopher Trainor, George Likourezos, Jeffrey Steen, Michael Brew, Dana Brussel, Frank Sardone, Bernadette Bennett, Thomas Rosselli, J.P. Cass, Pina M. Gulla, Michael Krenicky, Mark Whittenberger, James Wiltzius of Carter, DeLuca, Farrell & Schmidt, LLP, Suite 225, 445 Broad Hollow Rd., Melville, New York, United States, 11747 to submit this application on behalf of the applicant. The attorney docket/reference number is 1429-53.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: docket@cdfslaw.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /David M. Carter/ Date: 04/28/2006

Signatory's Name: David M. Carter

Signatory's Position: Attorney for Applicant(s)

Mailing Address:

David M. Carter

Suite 225

445 Broad Hollow Rd.

Melville, New York 11747

RAM Sale Number: 1325

RAM Accounting Date: 05/01/2006

Serial Number: 78873139

Internet Transmission Date: Mon May 01 10:26:55 EDT 2006
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991f-CC-1325-20060428153233968168

OSTEO PLATFORM

OSTEO PLATFORM